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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 146

THE UNITED STATES OF AMERICA, PETITIONER

vs.

RALPH RAYNOR

No. 147

THE UNITED STATES OF AMERICA, PETITIONER

vs.

CHETT FOWLER

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 15, 1937.

CERTIORARI GRANTED OCTOBER 11, 1937.

SUPREME COURT OF THE UNITED STATES

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1 Pleas of the District Court of the United States for the Southern District of Indiana, at the United States Court House in the City of Indianapolis, in said District, before the Honorable Robert C. Baltzell, Judge of said District Court. Placita.

United States
vs.
Ralph Raynor, Chett Fowler, alias Chess Fowler } 6664 Criminal

BE IT REMEMBERED that heretofore to wit: at the May Term of said Court, on the 24th day of October, 1936, Before the Honorable Robert C. Baltzell, Judge of said Court the following proceedings in the above cause were had, to wit:

Comes now the Grand Jury and returns into Court the following bill of indictment to wit:

Oct. 24, 2 United States of America,
Southern District of Indiana, } ss.

IN THE DISTRICT COURT OF THE UNITED STATES

For the Southern District of Indiana

Indianapolis Division

May Term, 1936

United States
vs.
Ralph Raynor, Chett Fowler, alias Chess Fowler } No. 6664

The Grand Jurors of the United States within and for the Southern District of Indiana, impaneled, sworn, and charged in said Court at the term and division aforesaid, to inquire for the United States for the Southern District of Indiana, upon their oaths charge and present that:

Ralph Raynor and Chett Fowler, alias Chess Fowler, late of said district, at Indianapolis in Marion County, Indiana, in the Indianapolis Division thereof, on or about the 9th day of October, 1936, did then and there unlawfully, wilfully knowingly, and feloniously make and aid in the making of impressions in the likeness of part of an obligation of the United States, to-wit, reverse impressions of the face and back of a Federal Reserve note of the denomination of twenty dollars ($20.00), purporting to have been issued by the Federal Reserve Bank of Chicago, Illinois, Series 1928B, the serial numbering, check letter, and face plate numbers thereon being obscured by superimposed paper strips, which said impressions contained reproductions of the signatures of W. O. Woods, Treasurer of the United States, and A. W. Mellon, Secretary of the Treasury of the United States.

3 Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

COUNT II.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further charge and present that:

Ralph Raynor and Chett Fowler, alias Chess Fowler, late of said district, at Indianapolis in Marion County, Indiana, in the Indianapolis Division thereof, on or about the 9th day of October, 1936, after a distinctive paper had been adopted by the Secretary of the Treasury of the United States for the obligations and other securities of the United States, did then and there unlawfully, wilfully, knowingly, and feloniously have in their possession at and in rooms number 607 and 1015 in the Severin Hotel in Indianapolis, Indiana, similar paper adapted to the making of such obligations and other securities, without the authority of the Secretary of the Treasury or any other proper officer of the United States.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Val Nolan
United States Attorney.

4 (Endorsed): No. 6664. United States District Court, Southern District of Indiana. The United States of America *vs.* Ralph Raynor, *et al.* Indictment: Counterfeiting. A true bill, Paul Daugherty, Foreman. Filed in open Court this 24th day of October, A. D. 1936. Albert C. Sogemeier, Clerk. Bail, Fowler $2,500.00; Raynor $5,000.00.

5 which bill of indictment is endorsed "A True Bill" and signed by Paul Daugherty, Foreman of said Grand Jury.

6 And afterwards to wit: at the May Term of said Court on the 30th day of October, 1936, before the Honorable Robert C. Baltzell, Judge of said Court, the following further proceedings were had herein to wit:

Comes now Val Nolan, Esq., Attorney for the United States, and comes also the defendant, Chett Fowler, alias Chess Fowler, in his own proper person, and said defendant being arraigned upon the indictment herein, for plea thereunto, says that he is not guilty as charged therein.

It is ordered by the Court that this cause be set for trial November 12, 1936.

Entered Nov. 7, 1936.

7 And afterwards to wit: at the November Term of said Court on the 7th day of November, 1936, before the Honorable Robert C. Baltzell, Judge of said Court, the following further proceedings were had herein to wit:

Comes now Val Nolan, Esq., Attorney for the United States, and comes also the defendant, Ralph Raynor, in his own proper person, and by his attorney, and said defendant files demurrer to count one of the indictment, which demurrer is as follows: (H. I.)

And said defendant now being arraigned upon count two of the indictment herein, for plea thereunto says that he is not guilty as charged therein.

Entered Nov. 12, 1936.

8 And afterwards to wit: at the November Term of said Court on the 12th day of November, 1936, before the Honorable Robert C. Baltzell, Judge of said Court, the following further proceedings were had herein to wit:

Comes now Val Nolan, Esq., Attorney for the United States, and come also the defendants, Ralph Raynor and Chett Fowler, alias Chess Fowler, each in his own proper person; comes also George R. Jeffery, attorney, and files appearance for said defendants, which appearance is as follows: (H. I.)

And the demurrer and motion to quash heretofore filed by defendant, Ralph Raynor, is now submitted to the Court, and the Court being duly advised, orders that said demurrer and motion to quash be, and the same are, hereby overruled, to which ruling of the Court said defendants except.

And said defendant, Ralph Raynor, being now arraigned upon count one of the indictment, for plea thereunto says that he is not guilty as charged therein.

And come also the persons drawn and summoned as petit jurors in this Court, and they are severally examined as to their competency for trial of this cause, and this cause coming on now to be tried, here comes a jury, to wit: Henry Giescke, Jos. M. Cummings, Ozro Legg, James W. Milhon, Ernest Warum, Marvin Foulke, D. L. Wheeling, Robert Hilger, Clintie Cochran, Thomas Cory, John S. Griffin, and Em-

erton Wolfe, who are duly impaneled and sworn, and having heard the evidence in part, and at the conclusion of the Government's evidence in chief, defendants file motion for directed verdict, which motion is as follows: (H. I.)

And the Court being duly advised, orders that said motion for directed verdict be, and the same is, hereby overruled, to which ruling of the Court said defendants except.

9 (Entry for November 12, 1936, continued) Filed Nov. 12, 1936.

And further evidence is heard and concluded, and thereupon said defendants file motion for directed verdict, which motion is as follows:

10 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption 6664) * *

MOTION TO DIRECT A VERDICT OF NOT GUILTY AT THE CONCLUSION OF ALL THE EVIDENCE.

The defendants, Ralph Raynor and Chett Fowler, each in his own behalf separately and severally moves the Court, at the conclusion of all the evidence in the case, to direct the jury to return a verdict of "Not Guilty" as to himself on each and every count in the Indictment upon the following grounds and for the following reasons:

I.

The evidence adduced does not prove nor tend to prove the allegations in count one of the Indictment, and fails to show that either defendant made any impression within the meaning and intendment or within the language of the statute. It further fails to show the making of any impression as described in said Count.

II.

The evidence adduced does not prove nor tend to prove the allegations in count two of the Indictment, and fails to show that either defendant had in his possession any paper as described in this count of the Indictment.

11 III.

There is a fatal variance between the proof, and the allegations contained in the first count of the Indictment.

IV.

There is a fatal variance between the proof, and the allegations contained in the second count of the Indictment.

V.

The undisputed evidence shows that the paper possessed by each of these defendants was of the kind and quality sold generally by stores to the trade and that these defendants and the public generally were entitled to possess this paper without authority of the Secretary of the Treasury.

VI.

And upon the further ground that upon all the evidence introduced the jury could not properly find a verdict of "Guilty" against him, the said Ralph Raynor, or against him the said Chett Fowler, upon any ground or for any reason.

George R. Jeffrey
Attorney for Defendants, Ralph Raynor, and Chett Fowler.

12 (Entry for November 12, 1936, continued)

And this cause is now continued until tomorrow morning, the jury being permitted to separate under admonition of the Court.

13 And afterwards to wit: at the November Term of said Court on the 13th day of November, 1936, before the Honorable Robert C. Baltzell, Judge of said Court, the following further proceedings were had herein to wit:

Comes now Val. Nolan, Esq., Attorney for the United States, and come also the defendants, Ralph Raynor and Chett Fowler, alias Chess Fowler, each in his own proper

person, and by his attorney, and the jury heretofore impaneled and sworn also comes, and the trial of this cause is now resumed.

And the defendants' motion for directed verdict, is now submitted to the Court, and the Court being duly advised, orders that said motion for directed verdict be, and the same is, hereby sustained as to count one of the indictment, and overruled as to count two of the indictment, and said defendants except to the ruling on said motion as to count two of the indictment.

And the jury now returns into open court under instruction of the Court, its verdict as to count one of the indictment, which verdict is as follows:

"We, the jury, find the defendants, Ralph Raynor and Chett Fowler, not guilty as to count one. D. L. Wheeling, Foreman."

And the argument of counsel is heard and the jury is instructed by the Court, and retires under a sworn bailiff to consider of a verdict, and the jury now returns into open Court its verdict as to count two of the indictment, which verdict is as follows:

"We, the jury, find the defendants, Ralph Raynor and Chett Fowler, guitly, as charged in Count Two of the Indictment. John S. Griffin. Foreman."

It is thereupon ordered by the Court that the jury herein be, and the same is, hereby discharged, and this cause is continued until November 16, 1936, at 2:00 P. M.

14 And afterwards to wit: at the November Term of said Court on the 16th day of November, 1936, before the Honorable Robert C. Baltzell, Judge of said Court, the following further proceedings were had herein, to wit:

Comes now Val Nolan, Esq., Attorney for the United States, and come also the defendants, Ralph Raynor and Chett Fowler, alias Chess Fowler, each in his own proper person, and by his attorney, and said defendants file motion for new trial, which motion is as follows:

Nov. 16, 36. 15 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—6664) * *

MOTION FOR A NEW TRIAL.

Come now the defendants, Ralph Raynor and Chett Fowler, each in his own behalf, and within the time allowed by law, and each separately and severally presents and submits to the Court his Motion for a new trial herein and prays the Court to set aside the verdict heretofore returned against him in this cause for the following reasons, to-wit:

I.

That the verdict of the jury is contrary to law.

II.

That the verdict of the jury is contrary to the evidence.

III.

That there was no sufficient competent evidence to support the verdict as to the defendants, or either of them.

16 IV.

The Court erred in not granting the separate and several motions of each of the defendants for a peremptory instruction to the jury to render a verdict of not Guilty at the close of the whole case.

V.

The Court erred in permitting the Government to introduce in evidence over the objections of each of the defendants, Government's exhibit number 3.

VI.

The Court erred in refusing to permit the witness Galligher to answer questions propounded on cross examination as to

whether there was any effort on the part of either of the defendants to counterfeit, or whether it was ever their intention to counterfeit, and in sustaining the objections of the Government to such questions asked upon cross examination.

VII.

The Court erred in refusing to permit either John O. Burton, a Government witness, or John Keller a witness for the defendants, to make a test of exhibit 3 by using an eraser in an effort to determine whether certain marks referred to could be removed.

VIII.

The Court erred in admitting irrelevant, incompetent, prejudicial and immaterial testimony offered by and on behalf of the Government, particularly with reference to the ex-
17 hibits offered in behalf of the Government at the trial of this case, wherein and whereby certain papers, containing so called impressions, vessels, and bottles containing some substance, wood press, glass, and other paraphernalia were admitted in evidence and exhibited to the jury over the objections and exceptions of each of these defendants at the time, and which were of such nature as to impress the jury with the belief that these defendants might have been counterfeiters, and were of such nature as to unduly prejudice the jury against the defendants to the extent that neither of them could have a fair trial or impartial verdict in so far as the jury was concerned.

IX.

That the Court erred in charging the jury as follows, "the law does not say the paper must be the same identical paper that has been adopted—it must be similar," to which portion of the Court's charge each of the defendants then and there objected and excepted.

X.

That the Court erred in charging the jury as follows, "the statute does not say that in order to be similar the paper must have threads in it—it might be similar and only have markings such as to lead one to believe it was paper that had

been adopted by the Secretary of the Treasury," to which portion of the Court's charge each of the defendants then and there objected and excepted.

18 Wherefore, for the above and other good, valid and sufficient reasons each of these defendants prays that the verdict of the jury be set aside and that each defendant be granted a new trial herein.

George R. Joppley
Attorney for Defendants, Ralph Raynor, and Chett Fowler.

Entered Nov. 16, 1936.

19 (Entry for November 16, 1936, continued)

And the Court being duly advised, orders that said motion for new trial be, and the same is, hereby overruled, to which ruling of the Court said defendants except.

And said attorney for the United States now moves the Court for sentence and judgment upon the verdict of guilty heretofore rendered herein.

It is therefore considered and adjudged by the Court that said defendants are guilty as charged in count two of the indictment.

It is further considered and adjudged by the Court that the defendant, Ralph Raynor, for the offense charged in count two of the indictment be committed into the custody of the Attorney General of the United States, or his authorized representative for imprisonment and confinement in an institution of the penitentiary type for a period of Four (4) years.

And it is further considered and adjudged by the Court that the defendant, Chett Fowler, alias Chess Fowler, for the offense charged in the indictment be committed into the custody of the Attorney General of the United States, or his authorized representative for imprisonment and confinement in an institution of the pentitentiary type for a period of two (2) years.

It is further ordered by the Court that said defendants be released under their present recognizance bonds until November 19, 1936, which bonds are considered in full force and effect until said defendants report, or until further order of this Court.

52 (Entry for December 28, 1936, continued) Entered Dec. 1936.

Upon defendants' motion for an order of Court to transmit certain original exhibits, which were introduced in evidence, to the Circuit Court of Appeals, the Court finds that it is impractical to include said exhibits in the transcript of the evidence in such form as to render them valuable as evidence as they appeared to the jury.

It is, therefore Ordered, by the Court that Government's Exhibit 3, and Defendants' Exhibits 1, 1A, 2, 3, 4, 5, 7, 8, 9, 9-A, and 9-B be transmitted by the Clerk of this Court to the United States Circuit Court of Appeals for the Seventh Circuit, at Chicago, as original evidence or exhibits in this cause as a portion of the record in this cause.

Come now the defendants, by their attorneys, and file joint bill of exceptions, which has been signed and approved by the Court and is as follows:

53 IN THE DISTRICT COURT OF THE UNITED STATES. Bill of exceptions filed Dec. 28, 1

* * (Caption—6664) * *

DEFENDANTS' JOINT BILL OF EXCEPTIONS.

Filed Dec. 28, 1936. Albert C. Sogemeier, Clerk.

Be it remembered, that at the trial of the above entitled cause, before the Honorable Robert C. Baltzell, and the Jury empaneled in said cause, the following proceedings were had, to-wit:

CLARENCE CONES, a witness called on behalf of the Government, being first duly sworn, testified as follows:

My name is Clarence Cones. I live West of Whiteland, in Johnson County, Indiana. I am twenty-nine (29), have a wife and two (2) children and have lived on a farm since year ago last July, living formerly in Indianapolis.

In 1931 I was convicted in this court of counterfeiting, received two con-current five (5) year sentences at Chillicothe, and was paroled after serving thirty-two (32) months and

six (6) days. I was never convicted of any other crime and had no illegal transactions in narcotics.

I know the defendant Chett Fowler. I made his acquaintance, right after I was paroled, at a kind of a hole in the wall beer tavern called Talbot Inn, in which I believe
54 he had an interest. That was in '35. I do not remember the conversation, but I next met Fowler on Kentucky Avenue about August of this year, at a repair shop of Overland Trucking Company, where he was working on a commission for getting business.

Fowler wanted to know if he could put some contraband or stolen cigarettes in a barn on my place. I told him it would be impossible as the barns might leak and I didn't want to have anything to do with anything of that nature. Fowler said he had a proposition that might help us both financially and I went back three or four times. He stalled apparently trying to contact another man and asked if I could come back again.

On the third trip he asked if I believed it was possible to reproduce counterfeit money by transferring the ink from a good bill to Government paper. I told him no. Until then the subject of counterfeit had not been mentioned between us. Fowler said it was possible, having seen it with his own eyes.

Fowler was transferred and I went to see him at his new address one morning the latter part of September of this year. He explained the proposition in more or less detail and asked if I could produce an amount or had enough money to invest in it. He explained that he had a man that could absolutely reproduce any United States bill so perfect that any one could take it to any bank in the United States and that they would swear that it was good, and take it and cash it. If I would get a person with as much as ten thousand dollars, he could get this man to reproduce that ten thousand and make twenty thousand dollars and I would get a ten per cent of the original ten thousand dollars. I told Fowler I pos-
sibly knew a man that might be interested in that sort
55 of scheme in Evansville. Fowler knew I had served time for counterfeiting. We went to Evansville that same day in a car which I presume was Fowler's, to contact the man who I said I thought would be interested in the proposition. He was Carl Smith. He runs a restaurant there and had served time in Chillicothe with me. We saw him at Evansville.

About an hour after I met Fowler at this new address I made an excuse that I was going to get dinner. I came downtown and reported the incident to the Secret Service. That was the first I discussed the matter with Secret Service officers. They had not sent me to try to make this connection.

At Evansville Fowler explained the proposition to Smith as he explained it to me: They had to have approximately ten thousand dollars worth of good money, and they would take the good money and take enough ink off of each side of one bill to print another bill with it, and that they could make twenty thousand dollars out of ten thousand dollars.

Fowler said they had access to Government paper and would produce the money on genuine Government paper. When we got to Evansville I left Fowler in his car and took a ride with Smith. I told Smith to fall in line with anything Fowler explained to him, and as soon as we got back to Indianapolis for him to telegraph me he couldn't come but that he would send another man, Tom Hollowell. Smith told Fowler he would come to Indianapolis the following week and Fowler and I returned to Indianapolis alone. We agreed to meet Saturday, and Fowler then stated he had contacted his man and would have him in Indianapolis the first part of the week. In the meantime I had reported the entire procedure to Mr. Gallagher of the Secret Service and I told him he could pass himself off as Tom Hollowell.

I showed Fowler a telegram from Smith and Fowler said Hollowell could act in Smith's capacity. Tuesday evening,
October 6th, Gallagher waited in the Union Station while
56 I went to meet Fowler. After a telephone call Fowler
left in his car and brought back the defendant Raynor. Raynor inquired about the past of Tom Hollowell. I told him he had served a sentence in Chillicothe. The three of us then went over the process of reproduction briefly and Raynor said I would see it all in the next day or two. I explained Hollowell was acting for Smith who supposedly was putting up the money. Mr. Raynor said he and two other persons had developed this system of swindling to a fine degree and that they couldn't be touched by the law. Raynor explained that he took impressions and made it seem as if he reproduced the bill, but that he took an absolutely perfect impression from a bill and that he would produce two bills of exactly the same type, the same plate number, check letter, number and everything identical, which he did.

Q. Now, state whether or not the defendant Raynor or

the defendant Fowler, either on or both, indicated to you, or said to you whether they were going to actually reproduce all ten thousand dollars—all of this ten thousand dollars worth of money that Hollowell was going to bring in for Carl Smith.

A. No, they had no intention to reproduce the ten thousand dollars.

Q. Did they tell you what they did intend to do?

A. Yes.

Q. That is, the defendant Fowler and the defendant Raynor told you what they intended to do if they got the ten thousand dollars?

A. They explained to me that they would take the supposed victim and show him to such an extent that would thoroughly convince him that they could reproduce a genuine bill and, then, when he was thoroughly convinced, he
57 would produce his ten thousand dollars and, through some sleight of hand performance, or otherwise, they would steal the ten thousand dollars and make away with it.

Raynor said he could force the operation and make the reproduction in an hour or an hour and one-half, but that wasn't the correct way to do it and it would take approximately twenty-four or a few more hours.

Fowler, Raynor and I left the garage and picked up Gallagher, who was known to the defendants as Tom Hollowell, at the Union Station. Raynor explained part of the proposition to Gallagher. We made an appointment to meet the next day, Wednesday. Raynor said Gallagher couldn't believe it if he told him about it, that he would have to show it to him to convince him. Raynor asked Gallagher if he could produce the ten thousand dollars. Gallagher said if the proposition was good enough he believed he could convince Smith to put up ten thousand dollars.

The next morning, Wednesday, Fowler came to my farm and gave me five one dollar bills, indicating which one Raynor would reproduce. Fowler said that when Raynor asked for some money to reproduce I was to take those out of my pocket and lay them on the table so that he could sort through them and pick out the one that he wanted. Four were old bills and Fowler said that Raynor would pick the other which was the newest one.

Gallagher and I then met and took the numbers of the bills and later Fowler, Gallagher and I met at the Union Station. Without making any inquiry at the desk or elsewhere, Fowler

took us to Room 607 Severin Hotel where we met Raynor, Raynor asked Gallagher if he thought he could produce ten thousand dollars, if he believed Raynor could reproduce the genuine bill. Gallagher said he was here to see what he could see. Raynor began setting up pans and bottles and all that equipment and after mixing a solution asked if either of us had a bill he could reproduce. Gallagher produced
58 a five and ten and I produced the five-one dollar bills the defendant Fowler had instructed me to use. Raynor looked at Gallagher's bills and said he would rather not use those bills. Raynor looked through my bills carefully and selected the bill Fowler had told me he would select. Raynor said it was against the law to have two bills of the same number, but that he had a list of all the American money that was in circulation in the old country and that when he reproduced the impression of this ten thousand dollars he could change those numbers to correspond with the money that was in foreign countries; therefore there wouldn't be any two bills in the United States with the same numbers.

Raynor took two sheets of white thin paper and coated one side of each piece of paper with a solution approximately the color of potassium permanganate, but it didn't leave a stain as potassium permanganate would and then he took the one-dollar bill that he had selected out of the five that I handed him, and soaked that in a solution. Then he very carefully took a few cubic centimeters of another liquid and produced an alcohol lamp and heated this fluid with an addition of some white powder in a test tube. He then added that to the solution that the bill was in. Then he took the bill and placed it between the two pieces of treated paper and rolled them very carefully around a little roller—very carefully and very tightly—and then took a long piece of glass, possibly sixteen or eighteen inches long, about three to four inches wide and possibly five-eighths of an inch thick, and rolled them, on the table, on a longer piece of glass, always rolling from him. He then took that, I believe, and stuck that in the solution. He then took the—unrolled them and he had a very good impression of each side.

59 Mr. Jeffrey: Just a minute. I object to a description of what he had.

The Court: Well, just answer the question without going into detail as to what he had—just what he did.

A. (continued) He took out, or took the one dollar bill from inside of the two pieces of paper. He then took the

two pieces of paper that had the impression of the bill on them.

Mr. Jeffrey: I object, your Honor.

The Court: Overruled. Go ahead.

A. (continued) He took the two pieces of paper that had the impression of the one dollar bill on them and laid them aside temporarily, and produced another piece of paper that he handed to myself and Mr. Gallagher to examine for the silk threads. Mr. Raynor had stated that this was official Government paper, and both of us examined this paper that was similar to Government paper.

Q. What size was it?

Mr. Jeffrey: Just a minute, please. Your Honor, I object to the—

The Court: Let that last go out.

Mr. Jeffrey: And I object to the answer given about the one dollar bill and move that it be stricken out for the reason that there isn't charged anything about a one dollar bill in this indictment.

The Court: He is telling what took place. You have got intent in this. It will be overruled as to that.

Mr. Jeffrey: May I have an exception, if your Honor please?

60 After we examined this piece of supposedly Government paper, Raynor took that piece of paper and put it between these two pieces with the impression on and went to the bureau and put a blotter on each side of it and, then, in so doing, I believe he transferred those two over and picked up another one dollar bill and put it into a magazine and gave it to Gallagher with the instruction to sit on it and not move around. He took the dollar bill from the magazine. In the meantime, the original bill that he was supposed to have duplicated, was lying on the table all the time. Fowler told Gallagher to mark that bill so that it could not be mixed with the duplicate and he tore a little piece off the corner. Then Mr. Raynor took the bill out, dried both bills and passed them to Gallagher and me for inspection. The dollar bill referred to is one Fowler brought to the farm. It was in the glass roller between the two pieces of paper, but the other bill was not. A switch was made on the bureau when the blotters were shuffled around. Raynor got that other dollar bill from that pile of blotters.

Q. Now, what became, then, of these two one dollar bills

that the defendant Raynor handed to you and Tom Gallagher to inspect?

Mr. Jeffrey: Your Honor, I object to the question for the reason that it doesn't matter, for the reason that they are not charged with destroying the bills.

The Court: Overruled.

Mr. Caughran: Answer the question.

A. Mr. Raynor tore up the original bill and handed Mr. Gallagher the supposed duplicate.

61 Q. In other words, you speak of the original as the one that he had brought to the farm, that morning?

A. Yes, sir.

Mr. Jeffrey: Now, your Honor, I move to strike out the answer for the reason that that might constitute an offense with which they are not charged in this indictment.

The Court: Well, let that last question go out.

Q. Now, what became of the other one dollar bill that you have spoken about?

A. I believe it was in the exhibits of the Government.

Q. Well, I don't mean that, but what became of it there at that time?

A. After it was destroyed, it was thrown in the toilet.

Q. No, the other one.

Mr. Jeffrey: I object to that.

Q. (continued) Well, the one about which you have spoken—the other one that you were examining.

A. The other one, I believe, was given to Mr. Gallagher.

Q. At that time?

A. At that time.

Arrangement was made for me to meet with the other three men the next afternoon, but I did not. Fowler came to my farm the next morning, and told me it wouldn't be necessary for me to show up. I came back that evening (Thursday) and met Gallagher, Fowler, and Raynor in Raynor's room number 1015 Severin Hotel, as Fowler told me Raynor was nervous and wanted to see me.

62 *Cross-Examination by Mr. Jeffrey.*

My first contact with Fowler in 1935 was more or less of a chance meeting. I had some conversations with him about narcotics along about that time, and on various occasions made indirect efforts to find out from him where I could get

narcotics. He was reported to have taken an ounce of morphine to a drug store to have it checked and the report became circulated that he was handling illegal narcotics. To the best of my knowledge it was morphine. I reported this to the narcotic agent. I never tried to make a buy from Fowler. I farm two hundred and forty acres owned by my dad. After my return from the reformatory I worked on the farm for a living. During that time I have acted more or less as an informer for the Narcotics Service or some branch of the Government. I never received a salary but I got compensation for each case. They are not obligated to pay me anything and I don't recall exactly how much they have paid me.

I have never talked to Fowler pertaining to counterfeit money. I do not know how to make counterfeit money. I financed the case in which I was convicted. I was contracting at that time. I never at any time had any intention to become a party to a counterfeiting scheme and I don't know about Fowler.

The first time that I knew that this was not a true counterfeiting scheme was the first night I met Raynor. That was the first time I knew that it was a swindle instead of a counterfeiting scheme.

Q. Now, what was your purpose in taking Fowler to Evansville, to contact Smith?

A. To produce a man that they would operate in front of.

63 Q. "Why did you go clear to Evansville to do it? Couldn't you find someone here in Indianapolis?"

A. Not that Mr. Fowler possibly didn't know.

Q. How is that?

A. I wanted to get somebody that Mr. Fowler didn't know.

I had already given this information to the Secret Service. They didn't know why I was going to Evansville, other than just to produce a supposed victim. I worked that out in my mind. I was not informed that I would receive compensation from the Government. I have received money from this department of the Government, acting as an informer.

Q. Before Gallagher came into this plan, here, you did know that there would be no intention to counterfeit money, didn't you?

A. I did not.

Q. When did you first learn that there would be no money counterfeited?

Mr. Caughran: If the Court please, I object to the question.

The Court: I don't understand they are charged with that. They are charged with having in possession this paper to make an impression.

Mr. Caughran: That is all.

Mr. Jeffrey: Well, I take it, your Honor, that the ultimate intent of the statute is to prevent counterfeiting.

The Court: Oh, yes, but they might have this paper and sell it to somebody else, never intending to counterfeit at all, and yet it would be an offense under this statute, wouldn't it? It charges the possession of the paper in the second count. That is the offense charged.

64 Q. Did you ever see any distinctive Government paper in the possession of either of these defendants?

A. I saw a paper that was very similar to Government paper.

Q. That is the paper that was seized, is it?

A. Well, I presume so.

The paper seized is not all the paper I ever saw in their possession. I never saw the book of money that was supposed to be in foreign countries. The plan as I see it was to convince the man that they could perfectly reproduce a good bill, and when the intended victim produced his money, they would run away with it.

Redirect Examination by Mr. Caughran.

The only other occasion on which I was paid for information furnished the Treasury Department and the Secret Service was in a case at Columbus, Ohio.

THOMAS A. GALLAGHER, a witness called in behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Pfister.

My name is Thomas A. Gallagher, I live at Indianapolis. I have been an operative of the United States Secret Service for four and three-quarter years. My post of duty is

Indianapolis. I have known Clarence Cones about three years. He was previously convicted in this court for violating counterfeit laws. My first meeting with him in con-
65 nection with this case was in the Secret Service office Monday night, October 5th at seven-thirty, and he discussed with me an arrangement whereby I would be introduced, the following day, to these defendants, to be shown their operations.

About nine P. M. Tuesday, October 6, 1936 I was conducted into their presence by Cones. Fowler was in the back seat of a car and Raynor in the front seat. Raynor said he did not like to deal with a man he had not previously known about, and I said he would either deal with me or not, as he saw fit. Raynor said he would give a demonstration to Mr. Cones and me the following day, and he would arrange a room and Fowler would conduct us to where the demonstration would be made.

The following day, Wednesday, October 7th, Cones and I met Fowler about one-thirty P. M. and he conducted us to Raynor's room at 607 Severin Hotel, where we met Raynor. Fowler led us to the room without inquiry at the hotel desk. Raynor stated that he and two associates, neither of whom was in this country, had developed a method by which genuine currency of the United States could be exactly duplicated, so exactly that banks or the Government could not distinguish between the original and the duplicate that the proper and regular method required a twenty-four hour period of treatment but that, on this day, he would use what he termed a forced method to complete the entire operation within a short period so that we might see the whole thing at one sitting. He stated that the operation required would not be successful without the use of genuine Government paper, which he and his associates had; that they had genuine Government paper to the amount of about five thousand sheets and, when these were used, no more could be obtained by him, at least; that, by the method he employed, a genuine bill could be used only once and that, when it had been reproduced, or been used
66 to reproduce one additional note, both the original and the reproduction would then be fully passable but that neither of those could again be used in reproducing further duplicates, wherefore it was necessary that a considerable amount of money be produced because each bill would be used only once; that it was desirable that a great deal of it be

done at one time because the chemicals were scarce and that, after they had been mixed, they became worthless in a period of a few hours if not used immediately that, therefore, he would show us, today, what he was capable of doing, and that further discussion would occur later as to just exactly what would occur when the mass production—I believe that is my own term—whatever words he used were intended to convey the same meaning—took place a few days later on. He stated that, on this particular day, he would do something that he had done only a few times before, and it was extremely dangerous; that he would produce a duplicate which was identical in all respects with the original. He explained that this was a dangerous thing because, if he should be caught or if any person should be caught with two such identical bills in his possession, he would then be liable to prosecution by the Government. He added, at that point or possibly at a later point during this same conversation, indicating Mr. Cones and myself, that, "If you two men," he said, "happen to be Government men, I would be sunk for doing this—for reproducing one bill identical in duplicate."

At that point, he mixed certain fluids, from bottles that were on the dresser, into two or more metal pans.

I have examined these articles on our table numbered Government's Exhibit 7 to 27, inclusive. These exhibits were found in a different room of the hotel, two days later, to 67 which Mr. Raynor had removed in the meantime. As far as I can tell they are the same equipment I saw in room 607, but I can not state positively.

Continuing his operations, after placing the chemicals and fluids—color fluids—in two or more of the pans, he asked for genuine money to be reproduced. I had prepared myself with a five and a ten dollar bill, new bills obtained from a bank, and they were examined by Mr. Raynor and set aside. He said that he would explain later why he chose not to use a five or ten dollar bill.

Mr. Cones produced five one dollar bills, which he had shown me previously and about which we had had some discussion and the numbers of which I had recorded on an envelope, and Mr. Raynor selected one of these bills, which was new and not worn. The other four had been in circulation apparently and had become soiled.

I do not know what happened to any of the four bills. The one used in the experiment was ultimately destroyed by Raynor in my presence over my vigorous protest.

Raynor produced two sheets of white paper, somewhat larger than the currency, and took from a leather kit, containing six bottles, one which contained a brownish fluid. It had the odor of a coal tar product. He placed a considerable amount of this brown fluid on a piece of medicated cotton, or cotton, and coated one side of each of the two sheets of white paper. He had, in the meantime, immersed the genuine one dollar bill, supplied by Mr. Cones, into one or more of these pans and had treated it by what appeared to be chemical processes. He then placed this genuine bill, which was wet, between the two coated, treated surfaces of the two white
68 sheets of paper. The genuine bill, covered by the two white sheets, was then rolled tightly and firmly on a small rubber roller with a steel center and this roller placed on a glass sheet. By applying considerable pressure, then, with another piece of glass, about three inches wide and about sixteen inches long and about half-inch or more thick, Mr. Raynor rolled this rubber roller, about which the genuine bill and the two treated papers were wrapped, six or more times across the lower sheets, applying considerable pressure. He then removed it and immersed it in one of the pans of fluid.

At that point, he stepped across the room to a dresser, on which was a considerable pile of blank white blotters, the usual office size blotters, and he placed the two sheets of paper, between which was the genuine one dollar bill, all of which had been rolled and immersed in the fluid, between these blotters. Before he did that—no—he dried them slightly, at that point, with the blotters and then removed the two sheets from the genuine dollar bill, calling our attention to the fact that they—what he said was, "Observe that they now have an impression in reverse, which has been taken off the genuine one dollar bill. Now," he said, "I have taken off, perhaps, more ink in this case than I should. As a matter of fact, I can perform this operation without taking off even a visible amount of ink, but I have had to hurry, here, and force it more, force it more vigorously than I desired, simply because we are trying to do this in one day to demonstrate it to you, but," he said, "this impression, that has now been taken on these two sheets in reverse, will then be transferred on to genuine Government paper." And he produced this sheet of paper, cut to the size of the genuine currency, and stated that it was genuine Government paper, and invited our inspection.
69 Mr. Cones and I both examined it, under a light. When I held it up to look at it, I had the light right through it.

He said, "That isn't the way. Let the light reflect off of it, and then you will then see the red and blue lines which are a distinguishing feature of genuine Government paper." And I did look and saw these red and blue lines on the surface of the paper.

Mr. Raynor then placed this paper between the two sheets containing the reverse impressions of the front and back of the one dollar bill, placed them together, went over to the dresser where the stack of blotters stood, and placed what he had in his hand between two of the blotters. He then began throwing blotters pretty freely around the dresser, a couple here, a couple there and a couple here (indicating), and then, presently, he picked up two or four of them and brought them back and said, "All right." Now, you will have to sit on this a while to put pressure to it." I couldn't see just which particular blotters he picked up, but I could see that it wasn't the two blotters between which he had put the genuine bill and the two impression sheets because I followed them as closely as I could with my eye. So he placed these two blotters, with whatever might be between them, inside of a magazine and had me sit on it for about fifteen minutes while we talked about what later would be done in the furtherance of our plan. After about fifteen minutes, he had me get off the magazine and took out what was in it and immersed that—that was two white sheets with something inside—immersed that in fluid, skinned the paper back a small amount, once or twice, and said, "It is coming along fine," dipped it into the fluids again and presently pulled the two pages—papers which proved to be plain, I should say, papers
70 off, and, in the center, was what appeared to be a genuine—

Mr. Jeffrey: Now, I am objecting to what it appeared to be, there.

A. (continued) —well, what was genuine one dollar bill which, however, he told me he had just made by transferring the reverse impressions, which he had made, on to a blank sheet of genuine Government paper. He invited, at that time, a comparison between the original bill, which had been used in taking the impression and which I had torn at one corner with the assistance of Mr. Fowler, at his suggestion, to identify it—to compare this original genuine one dollar bill with the second one dollar bill, which Mr. Raynor said had been made by him by duplicating the other. I did compare them

and found that they did have the same serial numbering, the same check letter, the same face plate and back plate numbers, the reproductions of the same signatures of the Treasury officials, and were of the same series and were both silver certificates.

Mr. Jeffrey: Now, your Honor, I move to strike out all the testimony about the two one dollar bills, that not being included in the indictment and being, if anything—

The Court: Overruled.

Mr. Jeffrey: May I have an exception?

The one dollar bill used by the defendant Raynor was a one dollar silver certificate serial no. F 22820330 A series of 1934, Check Letter and Face Plate no. B 46, Back Plate no. 2915.

Government's Exhibit 6 is a genuine one dollar silver certificate, serial no. F 22820330 A series of 1934, Check let-
71 ter and Face Plate no. B 46, Back Plate no. 2915, series of 1934. There are the signatures of W. A. Julian, or reproduction of the signatures of W. A. Julian and Henry Morgenthaw, Jr. This was handed me by Raynor on the completion of his demonstration, October seventh. He invited me to go out and display it to the cashier of any bank or to any other authority on money and tell them, if I chose, that I thought it was not good and asked them their opinion on it, he assured me that all would tell me that it was a genuine bill.

I have had experience in handling currency and bills of the United States and have had training along that line. The United States never issues two bills of identical numbers bearing the same Check Letter, Plate numbers and Serial numbers.

I asked Mr. Raynor, at that point, what we were leading up to, exactly, specifically what the proposition was to be, and he said, "Why, you haven't seen anything yet. Now, if you can come back tomorrow, I will show you how to reproduce genuine money—duplicate it—and, in the same operation, change the numbers or some of the numbers."

He explained that it was not safe to have two bills in circulation in the same section or in the same country, which had identical numbers, wherefore it behooved him to produce bills only with numbers which would not be found duplicated in the United States. He explained, as has previously been testified to here, that he had a list of United States currency numbers

and so forth of such currencies, which money was in Europe, and, in that manner, by using those numbers in his reproduction, he could avoid likelihood of two bills of the same number showing up in the same place.

He then said to come back, both of us, at one-thirty I think, the next day, but that he might change hotel rooms in the
72 meantime, and we should, therefore, not come to the hotel room, but should meet Mr. Fowler downstairs, who would conduct us to wherever he might then be.

Fowler was present during the entire occurrence in the hotel room. I left the hotel room with Cones and Fowler, separated from Fowler down stairs, and met Fowler at one-thirty the next day. He stated Raynor changed hotel rooms, and without inquiry as to where Mr. Raynor would now be found conducted me to room 1015 in the same Severin Hotel, where we met Raynor and he again set up a lot of equipment which was afterward used in his demonstration.

On this day October 8, Mr. Raynor said he would do the first steps in producing currencies with different numbers than the original, and he asked me for some bills—a bill to be used for that purpose, and I again offered him the ten and twenty dollar bills—the five and ten dollar bills which I had produced the day before, and he objected to them for some reason that was not clear to me, and Mr. Fowler offered a twenty dollar bill from his billfold or from his pocket at any rate. Mr. Raynor accepted that.

Raynor mixed up some chemicals or some fluids in two or three of these pans and added a mixture of white powder and liquid, which he had heated over an alcohol lamp, and immersed this twenty dollar bill in several of those pans for varying periods. He forgot to use three of the pans, the first time, and, then, when I looked at them out of the corner of my eye, he went back and dipped it. He placed this bill between two sheets of blank white paper, which had not been treated in any manner, and then produced—the twenty dollar Federal Reserve note. He placed this twenty dollar bill, which was between the two sheets of blank paper, inside a sort of press, made of two boards with screws and thumb
73 screws on them and—

Government's Exhibit number 4 is an obligation of the United States, to-wit: a Federal Reserve twenty dollar note, drawn on the Federal Reserve Bank of Chicago, Illinois, Serial No. G21885595A, Series of 1928B, Check Letter and Face

Plate No. G33, Back Plate No. 34, reproductions of the signatures of W. O. Woods and A. W. Mellon.

I first saw that Exhibit on October eighth, in the defendant Raynor's room, in the Severin Hotel, when it was produced, there, by the defendant Fowler, at the request of the defendant Raynor for a genuine twenty dollar bill to be duplicated.

This bill was immersed in various fluids by Mr. Raynor and placed between two sheets of blank white paper, all of which was then placed inside of a wood press. The press was tightened up on the bill and Mr. Raynor said that it would be necessary for these chemicals, in which the bill had been immersed, to work on it for twenty-four hours, and he asked who was able to keep the bill in a safe place during that time. I said I was, and he showed me how to hold it up very carefully on one edge so that the chemicals would not run the wrong way and damage the bill; and I held it very carefully in that position until I left the hotel.

Government's Exhibit No. 13 is the wood press in which Raynor pressed the genuine twenty bill which is Government's Exhibit 4, and they were both delivered into my custody on October 8th by Raynor and remained there until between one-thirty and two o'clock the next day. I had them at all times until I met the defendants the next day.

Mr. Pfister: The Government now offers in evidence GOVERNMENT'S EXHIBITS NOS. 4 and 13, respectively.

74 Mr. Jeffrey: To which the defendants object, your Honor, for the reason that the Government Exhibit 4 purports to be a twenty dollar Federal Reserve note, which is not described or in any way referred to in the indictment, and Government's Exhibit 13 purports to be a wood press, which is not referred to nor in any way described in the indictment.

The Court: I will withhold ruling at this time.

I was in the hotel room with the two defendants about forty-five minutes on that occasion. Raynor instructed me to meet with Mr. Fowler in the lower part of the hotel, at one-thirty the following day with Exhibits 4 and 13 at which time he would complete the process.

Raynor said that he did not like the idea of Cones failing to show up that day, and he told the defendant Fowler to go down and see Cones and have him up there, between eight and nine o'clock, at Raynor's hotel room, the same night, which was October 8th, so we could understand where we all stood. He told me, also, to be there at that time, and I was.

We had only about a ten-minute talk. We met Fowler downstairs on the mezzanine floor.

Cones and I met Fowler and Cones said he hadn't been there because of illness in his family.

Raynor commented, during that conversation on the fact that Mr. Cones had served a term in a Federal institution and was probably known to the local authorities and that possibly it would be better if he pulled out of the thing at this point and not be seen with Mr. Fowler or myself on the street, because it might arouse the suspicions of the police, and it was, thereupon, agreed that Cones would not return the following day. Mr. Raynor told him he need not come back.

75 We separated, and I next met Fowler down stairs in the Severin hotel at one-thirty P. M. Friday, October 9th, having with me, at the time, the Exhibits 4 and 13 as instructed by Raynor. Fowler conducted me to Room 1015.

I delivered the press, Exhibit 13, containing within it the genuine twenty dollar bill, Exhibit 4, to Mr. Raynor, who again set up apparatus and filled several containers with various fluids and immersed the genuine twenty dollar bill in two or more of these pans. Mr. Raynor then, as on October 7th, took two sheets of plain white paper, somewhat larger than a genuine United States bill, and produced a bottle containing a brownish fluid, as he had on the previous occasion, and coated one side of each of these two sheets of paper with the brown fluid. He placed this genuine twenty dollar bill, which is Exhibit 4, between the treated surfaces of the two sheets of paper, rolled the whole carefully on a rubber roller with a steel center, placed this on a glass sheet and took another glass sheet, the same ones, I believe, as on the previous occasion, and applied heavy pressure and rolled the roller, with the papers and the genuine bill on it, repeatedly, under pressure, across the glass sheet. Presently, he unwound these papers and genuine bill from the roller, took off the two outside sheets and exhibited them to me, calling my attention to the fact that they bore reverse impression.

Mr. Jeffrey: Now wait. Your Honor, I object—

The Court: What did he say?

The Witness: He said, "You will notice that the impression has been transferred onto these white papers. Now," he said, "maybe I have made it heavier than I should

76 have because I don't need to take off any visible impression in order to make this transfer, but I have done it and—

Mr. Jeffrey: Now, your Honor, I object to statements about an impression, because it was an impression of Exhibit 4, which is not—

The Court: Is that the one you are talking about now?

Mr. Jeffrey: That is the note that is not referred to in the indictment, and I object to it and move that all of this testimony go out.

The Court: Overruled.

Mr. Jeffrey: May I have an exception, please?

Q. Mr. Gallagher, at that point,—

The Court: As I understand, this was the last day you were up there? Is that right?

The Witness: It was.

Government's Exhibits Nos. 1 and 2 are the reverse impressions of the face and back of a twenty dollar note on the Federal Reserve Bank of Chicago, which were made in my presence and in the presence of the defendant Fowler, from Exhibit 4, by the defendant Raynor on October 9th at Indianapolis.

Mr. Pfister: The Government offers in evidence GOVERNMENT'S EXHIBITS NOS. 1 and 2, respectively.

Mr. Jeffrey: To which, your Honor, the defendants each object for the reason that they purport to be so-called impressions made from Government's Exhibit No. 4, which is not a Federal Reserve Note described in the indictment. The witness has described Exhibit No. 4 as Serial No. G21885595A, and that is not the Federal Reserve note described in the indictment.

77 The Court: I will hold up the ruling on this, at this time. As I understand, those are the impressions of the note that is described in the first count of the indictment. Is that right?

The Witness: I don't know the number of the—

Mr. Pfister: Yes, sir, it is, your Honor.

The Court: I understood you to say, a moment ago, that that twenty dollar bill, Exhibit No. 4, wasn't the one.

Mr. Pfister: Mr. Jeffrey is contending that.

The Court: I don't know anything about it.

Mr. Pfister: It is our position that it is.

Mr. Jeffrey: I just want to call the attention of the Court to the fact that the indictment says that the serial number is superimposed, and fails to give the serial number.

The Court: Well, it doesn't give the serial number because it says it was obscured by superimposed paper strips.

Mr. Jeffrey: Yes, sir.

The Court: Do you have anything to say about that with reference to these impressions that were testified about a while ago?

Mr. Pfister: We were just coming to that.

The Court: I understand that you say this is the same note.

Mr. Pfister: It is.

Q. Now, Mr. Gallagher, what is the fact as to any numbers or identification marks on Government's Exhibit No. 4 having been obscured in any manner by one or both of the defendants?

The Court: That was at the time that the note was placed in the press?

Mr. Pfister: Prior.

The Court: Prior to that time.

78 Q. (Continued.) That is, prior to the delivery of Government's Exhibit No. 13, containing Government's Exhibit No. 4, to you on October 8, 1936?

A. That numbering on the bill was visible at that time.

I made memoranda of the numberings that were on the bill at the time I brought it to the office. The numbers on Exhibit 4 were not obscured. After the impressions had been taken and dried, Mr. Raynor produced a little packet—I think it was one that had originally contained razor blades—and produced from it three very tiny strips, which he pasted over the reverse serial numbering in two places and over the check letter and over the face plate number on the impression he had taken of the face side of the genuine twenty dollar bill. He pasted them not on the genuine bill, however, but on the reverse impression.

He didn't make this impression until the last day. The first day the bill was just being treated chemically he said. Exhibits 1 and 2 were not in the vise the night I took it to the office. He had two other papers in it of the same kind, but he took them out and used new papers. Exhibits 1 and 2 is the new paper he used after I returned with Exhibit 4, the twenty dollar bill, and the vise. The strips were placed on Exhibit 1 by Raynor in room 1015 of the Severin Hotel, which is in Indianapolis, Marion County, Indiana, and that is the place where these actions were performed.

Mr. Raynor then produced a sheet, which he stated was another sheet of genuine Government paper, permitted me to examine it, and I did examine it, and he then placed it be-

tween two sheets, Exhibits 1 and 2, which contained the reverse impressions of the twenty dollar Federal Reserve note,
and he went to the dresser, where he again had a large
79 pile of blotters, placed what he had in his hands between
two of these blotters and again threw blotters pretty liberally around the dresser in a manner which made it difficult to follow; that is to say, I didn't know which particular blotters were the ones that he had picked up and between which he had placed Exhibits 1 and 2. At that point he pick—

Q. I hand you a paper which has been marked Government's Exhibit No. 3, and ask you to state to the Court and jury what that is.

A. This is a paper cut to the size of the genuine United States Currency and it bears on both sides,—

Mr. Jeffrey: Now, your Honor, I object to a fuller description of this exhibit. I think all he has to do is identify it, and the exhibit can speak for itself as to what it is.

The Court: What was it you were going to say?

The Witness: It bears the markings—

Mr. Jeffrey: I object to that.

The Court: All right.

Q. Where did you first see that piece of paper marked Government's Exhibit No. 3, if at all, Mr. Gallagher?

A. I saw a piece of paper, which was of the same kind and appeared to have been the same, in Mr. Raynor's hands at the time he placed the reverse impressions on either side. I later recovered two blotters, having been continuously in the room, with the two papers, containing the reverse impressions of a twenty dollar note, and, with this sheet,—

Mr. Jeffrey: I object, your Honor, to the testimony about what they contained. Let them speak for themselves,—these
exhibits.

80 The Court: Go ahead.

A. (Continued)—with this sheet between them, and I found no others of the same kind in the room. Because I didn't see it continuously, I can't say whether it was the same sheet, but I couldn't find any other.

Q. Now, let's see. Do I understand, Mr. Gallagher, that Exhibit No. 3 was placed between Government's Exhibits Nos. 1 and 2?

A. It was.

Q. By the defendant Raynor?

A. It was.

Q. Whether or not the Government's Exhibit marked 3 is the identical piece of paper which was later seized by you, in the possession of the defendant Raynor or both of the defendants.

A. It was.

Q. Mr. Gallagher,—

The Court: Let me ask you about that Exhibit No. 1. Were those little strips pasted on there after the impression, as you refer to it, was made?

The Witness: They were. It was pulled off the genuine bill, to which it had been adhering, and then those strips were placed over it.

Q. I believe you stated, Mr. Gallagher, that you had had experience, in your work, with the contents of the paper used and the type of paper used by the United States in the making of Government obligations and securities. Is that true?

A. I have had some training in that regard.

81 Q. Yes. Basing your answer upon your experience as an officer in the Secret Service Department and the Training that you have had in connection with your office, state whether or not the paper, which you now hold in your hand, marked Government's Exhibit No. 3, is similar paper to that adapted for the use of making of Government obligations and securities of the United States.

A. I would say yes.

Q. Whether or not that paper, so marked, is similar to that paper adopted by the Secretary of the Treasury of the United States for the making of Government obligations and securities of the United States.

A. I would say that it is similar.

Q. And you may just state in what manner, Mr. Gallagher, it is similar.

A. It is, first of all, of the size of the genuine currency. It is a bond paper. The paper used by the Government is of a bond type. The feel and the crackle of it, which are distinguishing features, are similar, and it has in or on the surface curls of red and blue—

Mr. Jeffrey: Now, wait just a minute.

Your Honor, I believe I will object, at this time, for the reason that this exhibit is not in evidence yet and it has not been offered in evidence, and I object to it and to any further descriptions of the exhibit at this time.

The Court: Overruled.

Mr. Jeffrey: May I have an exception?

The Court: He is explaining in what manner this exhibit is similar to the genuine Government paper.

82 Mr. Jeffery: I understand that, but the exhibit is not in evidence.

The Court: Well, it has not been offered, but he has a right to explain the similarity.

Mr. Jeffrey: May I have an exception?

The Court: Yes. Go ahead with your answer.

A. (Continued.) The paper has in or on the surface red and blue curls which resemble the distinctive red and blue silk fibers which are impregnated into genuine currency paper.

After Mr. Raynor had placed between two or more blotters the reverse impressions, which he had made, with a sheet of what he described as genuine Government paper between them, he shuffled the blotters around a bit and presently came back with two or more blotters in his hand, between which was some paper—I couldn't see what it was—and he said, "Now you will have to sit on this like you did the other day until the impression is transferred." And, at that point, I gave a prearranged signal by lifting the telephone receiver and—listened to hear the officers at the door. There were two city detectives, Detective Sergeant John Gaughan and Detective Francis Logue, in the next room, and they received the message, which was relayed to them from the hotel switchboard, that it was time to come in. The defendant Raynor told me to sit down on the magazine, two or three times, but I wanted to be near the pile of blotters, where I could readily seize them, and so I fiddled around therefor a fraction of a minute until I heard the doorknob turn. The door was locked and the officers were not able to enter. As soon as I heard it, I picked up a pile of blotters, and Mr. Raynor was surprised and reached for them also, and I produced my badge in my other hand and said, "I am a Federal officer and

83 you are under arrest," and for them to get over against the wall, there. Mr. Raynor withdrew—he released his grip on the blotters, at that time, and the defendant Fowler came forward and said to me, "Tom—come on, now, Tom," and made a number of remarks which were just exclamations, really, and put his hands on my chest and shoulders and pushed me a bit. He also reached for the blotters, which I had in my left hand, and began to tear them up. He did tear, perhaps, a dozen or more, I believe, there, and I tried to push them away and I had my gun. I said, "Get back or I will

shoot," and he continued to talk to me and he took hold of one arm and pushed me around a little. He didn't strike me; he held on and pushed, and I said, again, "I will shoot if you don't get back," and he stood there and I reached the gun over his shoulder and fired once into the wall of the hotel room. At that time, either I pushed him away or he let go and it brought him nearer the door and I told him, then, to open the door, which he did. In the meantime, Mr. Raynor had moved back and forth around the room. He bumped into me, but he didn't strike me. I think it was only the narrow quarters that caused him to come in contact with me. He made a move toward the door and then away from it and back and forth, and, on the arrival of the officers, who were accompanied by Operative George B. Loy of the Secret Service, we took custody of the two men and custody of the paraphernalia. At that time, I picked up the magazine, which Mr. Raynor had told me to sit on, and, on opening it, found between the pages two blank sheets of white paper, similar to the original appearance of the ones on which the reverse impression had been made, and, between, found a genuine twenty dollar Federal Reserve note, on the Chicago Federal Reserve Bank, over which there were strips pasted; that is, on which the serial numbering, in two places, the check letter and the
84 face plate number had been obscured—covered by small strips, similar to those which had been previously pasted, in my presence, on the reverse impressions of the bill.

Government's Exhibit No. 5 is the genuine twenty dollar bill with strips pasted over the serial numbering and the check letter and the plate number, which I picked out of the magazine. Over the face and back of it were blank sheets of white paper similar to those used by Raynor in taking the reverse impressions of the other genuine twenty dollar bill which is Exhibit 4. Raynor and Fowler were placed under arrest at that time for violating the currency laws of the United States.

I have examined Exhibits numbered 7 to 27.

They were found in the possession of the defendants in room 1015 in the Severin Hotel in the city of Indianapolis, Marion County, Indiana on October 9, 1936. Raynor acknowledged ownership of the hand bag and brief case which contains some of these articles, and any of the things which were around his hotel rooms.

(The Government offers in evidence EXHIBITS NUMBERS 7 to 27 inclusive, which were on a table.

The Government also offers in evidence EXHIBITS NUM-

BERED 1 to 6 inclusive. Number three is the blank sheet of paper. Number 6 is the one dollar certificate. The Court sustains the objection as to number 6.)

Mr. Jeffrey: No. 1 is the reverse impression, they call it? Is that right?

The Court: It is the impression, yes, of the face of the bill, on which the numbers—which shows strips over the numbers. No. 2 is the other side of the bill. Now, that is the twenty dollar bill that you are speaking of. No. 3 is the blank paper, which he testified being similar to that adopted by the Government. No. 4 is the twenty dollar bill, as I
85 understand, which was in the vise or in the press on the night that you had it in your possession, Mr. Witness. Is that right?

The Witness: That is right, and was later used to make the reproduction.

The Court: No. 5 is two sheets of paper between which another twenty dollar bill was placed, with the strips pasted over the numbers.

I would like to ask about Exhibit No. 5, Mr. Witness, just a minute.

Did you examine the two pieces of white paper, between which the twenty dollar bill was placed, to ascertain whether or not those strips were made of paper similar to that which has been adopted by the Treasury?

The Witness: They are not.

The Court: They are not?

The Witness: The paper is thinner, it has no lines on it and it isn't the same size. I would not consider it as distinctive.

The Court: Well, I don't know whether you testified to this or not: that the United States Government has, or the Treasury Department has, adopted a certain distinctive paper for the purpose of printing the Government's obligations?

The Witness: The Treasury of the United States, yes, sir —the Secretary of the Treasury of the Treasury had adopted it.

The Court: You are familiar with that.

I think Exhibit No. 5 should not be admitted. That would be of absolutely no value because the paper, there, is not the kind that is used, and it is another twenty dollar bill. It might be just corroborative of the statement with reference to these strips being pasted over the numbers. It isn't neces-

sary because you have the Exhibit No. 1, which con-
86 tains the numbers he speaks of and also contains the strips. That is No. 5.

I think Exhibits Nos. 1, 2, 3 and 4 are competent.

Mr. Jeffrey: Then the defendants, and each of them, wish to object to the introduction in evidence of Government's Exhibit 1 for the reason that it is not the impression referred to in the indictment. The witness has stated that it is the impression of a bill, Exhibit No. 4, which has the serial numbers upon its face, while the indictment states that this so-called impression was taken from a twenty dollar bill which had paper strips superimposed over its serial number.

The Court: That is the one with the serial number on the impression after the impression was taken.

Mr. Jeffrey: Well, it may be according to how you read the indictment.

The Court: That is what the exhibit shows; that the strips are on the impression and not on the exhibit itself.

Mr. Jeffrey: The exhibit shows they are on the impression, and the defendants contend that the indictment reads that the strips were superimposed upon the face of the bill.

The defendants object to the introduction in evidence of Government's Exhibit 2 for the reason that it is not the impression referred to in the first count of the indictment and that it, according to the testimony of the witness, was taken from Government's Exhibit 4, which is a Federal note with its serial numbers visible, while the indictment states that the impressions were made from a bill whose serial number was superimposed with a paper strip.

The defendants object to the introduction in evidence of both Exhibit 1 and Exhibit 2 for the reason that they are not impressions and that, at the most, they are transfers and
are not such articles as are described in the first count
87 of the indictment, and are not within the intendment of the statute or within the language of the indictment, said impressions being in the reverse, and that not being made unlawful by the statute.

The Court: I don't know how you could take any better impression of a bill. Of course, perhaps it is just surplusage in there. I don't know what it means. Where you take an impression of any object, it would be, of course, in the reverse. The impression part of it would be just the reverse, so far as the notes are concerned. I don't think that means anything.

Mr. Jeffrey: As to the introduction in evidence of Government's Exhibit 3, I made my objection a while ago on the theory that that was not within the wording of the statute, and they have now identified that as similar paper haven't they?

The Court: You don't have any objection to that No. 3? The testimony of this witness is that it is similar.

Mr. Jeffrey: But the defendants object to the introduction in evidence of the Government's Exhibit 3 for the reason that the witness did not testify, and it has not been shown in evidence that this paper was adapted to the making of Government obligations, nor that it was suitable for the making of Government obligations.

The Court: Well, let's see about that. "After a distinctive paper has been adopted by the Secretary of the Treasury for the obligations and other securities of the United States any similar paper adapted to the making of any such obligation or other security,"—what do you say about that, Mr. Witness?

The Witness: I would say that this paper is adapted to the making of Government obligations.

The Court: Any objection?

Mr. Pfister: I thought he had already said that?

The Court: Well, if he didn't, he has said it now.

88 I guess that about takes your objection out.

Mr. Jeffrey: I expect it would, your Honor, yes. If he testifies that it is adapted, I expect that takes out the objection. However, I would like to object, for the purpose of the record, to the introduction in evidence of Government's Exhibit No. 3 for the reason that it is not a paper resembling a distinctive paper of the United States, nor adapted to the making of Government obligations, and has not so been identified by any expert other than that the Secret Service Agent on the stand.

The Court: That is for the purpose of saving the record?

Mr. Jeffrey: Yes.

The Court: It will be overruled.

Mr. Jeffrey: The defendants object, your Honor, to the introduction in evidence of Government's Exhibit 4 for the reason that it purports to be Federal Reserve note, Serial No. G21885595A, and it is not the Federal Reserve note referred to in the first count of the indictment, and these defendants are not charged, in this Court, in this case, with having made any impressions of Exhibit 4, or with having

done anything in connection with Exhibit 4, in contravention of the laws of the United States.

The Court: All right. Overruled.

Mr. Jeffrey: May I have an exception, your Honor?

The Court: Yes.

Let the record show that Exhibits 1, 2, 3 and 4 are read in evidence and the objection sustained as to Exhibits 5 and 6.

The said Government's Exhibits Nos. 1, 2, 3 and 4 were admitted and read in evidence.

The Court: Do you have any objection to Exhibit 13?

Mr. Jeffrey: Yes, Yes, I objected a while ago, your Honor, to Exhibit No. 13 on the theory that it was not in any
89 way described in the indictment. The defendants are not charged with having had that, and it has not been shown to be an offense to possess it.

The Court: The objection will be overruled.

Mr. Jeffrey: May I have an exception, please?

The Court: It is just one of the items of evidence which would show how the impression was made, if there was an impression.

The said GOVERNMENT'S EXHIBIT NO. 13 so offered, was admitted in evidence.

The Court: Now, as to the other exhibits, Exhibits 7 to—

Mr. Pfister: 7 to 27, with the exception of 13.

The Court: Yes. You can examine them.

Mr. Jeffrey: All right.

The Court: I will sustain the objections as to Exhibits 5 and 6, and we will have the cross-examination after lunch.

The Court: You may proceed.

Mr. Jeffrey: Your Honor, the defendants, and each of them, wish to object to the admission in evidence of Exhibit 7, which purports to be a leather case with some colored fluids in it; Exhibit 8, which consists of some metal pans in which fluids were mixed; Exhibit 9, which is a rubber-coated metal roller; Exhibit 10, a mortar and pestle; Exhibit 11, which is a graduate tube, used in measuring fluids; Exhibit 12, a graduate flask; Exhibit 14, a stack of blotters.

Now, to each and all of the exhibits numbered and named, the defendants object for the reason that the indictment does not charge either of the defendants with having any of these articles in their possession or that the possession of them was a violation of the law; and for the further reason that the
90 admission in evidence of either or all of these articles would not tend to prove or disprove that either of the

defendants made such impressions as are described in the first count of the indictment, or that either of the defendants possessed paper as described in the second count of the indictment.

The Court: Overruled.

Mr. Jeffrey: May I have an exception, please?

The said GOVERNMENT'S EXHIBITS NOS. 7 to 12, inclusive, and the said GOVERNMENT'S EXHIBIT NO. 14, so offered, were admitted and read in evidence.

Mr. Jeffrey: The defendants, and each of them, object to the admission in evidence of Exhibits 16 and 17, which purport to be glass plates used in the transfer process, for the reason that these defendants, and neither of them, is charged with the transfer, and that a transfer does not constitute an offense under this indictment or within the meaning of the statute, and it is not alleged or shown that either of said exhibits was used, or could in any way help, to make any impressions as are described in the first count of the indictment.

The Court: Objection overruled.

Mr. Jeffrey: An exception, please.

The said GOVERNMENT'S EXHIBIT NOS. 16 and 17 so offered, were admitted and read in evidence.

The defendants, and each of them, object to the introduction in evidence of the following numbered exhibits: No. 20, which purports to be a medicine dropper; 21, a test tube; 22, an alcohol lamp; 23, a bottle of unidentified fluid; 24, a bottle of after-shave lotion; 25;

91 The Court: Containing what?

Mr. Jeffrey: After-shave lotion.

(Continued)—25, a bottle containing an unidentified fluid; 26, a bottle containing unanalyzed white crystals; Exhibit 27, a roll of absorbent cotton; for the reason that the defendants, and neither of them, are charged in the indictment with the possession of any of these articles; the possession of none of these articles is made unlawful under any statute, and it has not been shown wherein any of these articles could be used in aiding to make such an impression as is described in the first count of the indictment; and for the further reason, as to Exhibit 23, a bottle of unidentified fluid, Exhibit 25, a bottle of unidentified fluid, Exhibit 26, a bottle containing unanalyzed white crystals, that it is not known what these are and they could not assist in determining whether the defendants, or either of them, has committed any offense as charged in the indictment.

The Court: Well, let the witness testify as to these last bottles. Let's see what they are, what he saw the defendants do with them, and we will take that question up.

Mr. Jeffrey: All right.

The Court: Take up each exhibit, Exhibit No. 19 and then the others that are objected to.

Exhibit No. 19 was with reference to the crayons.

Mr. Pfister: All right, sir.

THOMAS A. GALLAGHER, a witness on behalf of the Government, being recalled, testified as follows:

Direct Examination (resumed) Questions by Mr. Pfister.

92 All the exhibits referred to were found in the room occupied by the defendants.

Two of these bottles contain fluids of bulish tints and one of the two—I can't identify which of the two—was taken from this case and some of its contents added to other fluids, previously in one of the metal containers identified as Exhibit 8, into which, subsequently, notes or impressions or both were immersed in the course of the operations. Two of these bottles are of a dark brown—contain fluid of a dark brown shade. One or the other or both of those bottles, containing brown fluid, were used, on October 7th or 9th, or both, by the defendant Raynor. I saw the fluids, or one of them is the fluid which was used in preparing the two sheets of white paper to take off the impressions from genuine bills.

Government's Exhibit No. 8 consists of the entire collection of four or five metal containers, seized in Raynor's room, and some or all of them were used at one time or another in moistening papers which were used in the operation. Government's Exhibit No. 9 is a rubber—a cylinder of rubber with a steel or iron center, which was seized on October 9 by Operative George B. Loy and myself in the room occupied by the defendant Raynor, at the time of his arrest, and it is the cylinder which was used by the defendant Raynor, in my presence, on October 7 and again on October 9, in making reverse transfer impressions from genuine United States currency. Exhibit 10 is a mortar and pestle of the type used by chemists or druggists, and it was used by the defendant Raynor on October 7 and again on October 9 in pulverizing some

white crystals, which he then mixed with a fluid and
93 added to one of the solutions being used for immersing the papers which were used in the transfer.

The Court: That was taken from what exhibit?

The Witness: It is one of the higher numbers—twenty something, I believe.

The Court: What exhibit were the white crystals?

The Witness: Exhibit No. 26 were the white crystals which were pulverized with this mortar and pestal, and later used, or at least added to the one in which the papers were immersed in the process of transferring impressions.

Everything done by Raynor in my presence, was also done in the presence of the defendant Fowler.

No. 11 is a graduated tube, used for measuring the quantity of liquids. Exhibit 21 is an ordinary chemist's test tube. Into both of these pieces of apparatus fluids were placed and measured or heated and subsequently added to the fluids in Exhibit 8, the metal pans, in which subsequently papers were immersed, this being represented by the defendant Raynor to be a part of the transferring operation whereby the impressions were made.

Mr. Pfister: As I understand, Exhibit 13 is in evidence.

The Court: Yes.

Exhibit No. 12 is a graduated beaker, used for measuring fluids and into it, on October 7th and 9th, the defendant Raynor poured certain quantities of colored liquids, measuring them, so far as I could observe, and subsequently used those liquids in moistening papers which were employed in one or another phase of the transferring of impressions from genuine notes to other paper.

Exhibit 14 is a quantity of ordinary blotters—absorbent papers—which were employed by the defendant Raynor,
94 on October 7 and October 9. He used some from among these blotters to cover the transfer impressions, which he had made, and to hold those papers while the purported transfer was being made from them to the other papers which he represented were genuine Government papers. The small pieces among those are pieces of blotter which were torn up by the defendant Raynor at the time he was being placed under arrest. I must correct that—the defendant Fowler. Raynor didn't tear the blotters.

Government's Exhibits Nos. 16 and 17 are two pieces of glass, with the aid of which the impressions were transferred from the genuine notes on to previously prepared papers.

The papers, as previously described, were wrapped around a roller, Exhibit 9—is it? The smaller of these glasses was rolled across Exhibit 9 with these papers wrapped around it, the pressure applied being the means by which the reverse impression was transferred from the genuine note onto the previously prepared papers, these acts being done by the defendant Raynor in my presence.

Government's Exhibit No. 20 is a medicine dropper, which was employed by the defendant Raynor in my presence, on October 7th and 9th, to place minute quantities of various fluids in the previously prepared mixtures, into which papers were later immersed for transfer purposes.

Q. I hand you Government's Exhibit No. 21.

A. May I say papers or genuine bills, or both, with regard to Exhibit 20, were immersed for transfer purposes. I believe this was identified previously, Mr. Pfister.

Mr. Pfister: There was an error, I spoke of it as Exhibit 12 and it should have been 21.

95 The Court: 21.

Mr. Pfister: Yes, sir.

A. (Continued.) Exhibit 21 is a test tube, in which certain of the fluids were heated.

Q. I hand you Government's Exhibit 22 and ask you to state what it is.

A. It is an alcohol lamp, which was used in heating fluids in the test tube, just identified as Exhibit 21.

Government's Exhibit 24, is a partially filled bottle of after-shaving lotion. Raynor explained that by adding it to one of the pans he would take off that unpleasant smell from the original bill. He did pour some in the solution.

Q. Government's Exhibit No. 26, Mr. Gallagher, I believe you identified a moment ago as a bottle containing unanalyzed white crystals. You have identified it in connection with something else.

Government's Exhibit No. 27: state what it is.

A. It is a partially used package of absorbent cotton.

The Court: Did you see it used?

The Witness: Your Honor, the defendant Raynor used it in applying the brown fluid to the papers to make the transfer from genuine bills.

The Court: Is that all of your exhibits?

Mr. Pfister: Yes, your Honor.

The Court: The objection will be overruled except as to

the ones to which I sustained the objections as the witness testified.

The said GOVERNMENT'S EXHIBITS NOS. 20, 21,
96 22, 24, 26, and 27, so offered, were admitted in evidence.

Two days before the arrest, immediately after our demonstration by the defendant Raynor of October 7th, Fowler asked me whether I was very much impressed with what I had seen, and I answered that I would rather make money legitimately, if I could, and Fowler replied that he had been in rackets for a good many years and expected to die in rackets and would prefer to make his money that way, even if he could make it the other way.

Mr. Pfister: Now, if the Court please, I am not sure about this Government's Exhibit 3.

The Court: Yes, that was admitted. That is the one where he testified as to being a likeness.

The Witness: Yes. It is.

The Court: Do you have a record there, Mr. Carpenter, of the exhibits that were admitted and the ones that were not?

The Reporter: No, I haven't Judge. I haven't had an opportunity to bring my exhibit list up to date.

The Court: You can check on that before we close the case. I have admitted all of them, now, with the exception of the ones that I sustained the objection to as we went along.

Mr. Jeffrey: As I understand it, your Honor, the only exhibit, now, on the question of similar paper, is that exhibit numbered 3, isn't it? The other exhibits, the papers that were seized, are none of them in evidence?

The Court: How about the two on which the impression was made? Was there some evidence that they were similar paper? Those were exhibits 1 and 2 weren't they?

Mr. Pfister: Those were Exhibits 1 and 2, yes, sir.

The Court: Did you testify to the similarity of that paper?

The Witness: I was not asked as to that, if the Court please.

97 Q. Mr. Gallagher, I hand you Government's Exhibits numbered 1 and 2 and ask you whether or not the paper bearing those impressions, is similar to that adopted by the Secretary of the Treasury of the United States for the making of obligations and securities of the United States, and whether or not that paper is adapted to that use.

A. In my opinion, it is not.

The Court: Then the one exhibit is the only one.

Mr. Pfister: That is right, your Honor.

The Court: All right. Of course, the charge isn't that they made the impression upon papers of that kind.

Mr. Pfister: That is right.

The Court: All right.

Cross-Examination by Mr. Jeffrey.

Defendants' Exhibit number 1 is a sheet of water marked white paper. It bears the watermark "Eaton's Eminence Bond." It was seized from the defendants.

Defendants' Exhibit No. 1-A is a sheet of water marked paper. It bears the impress, "Horder's Rag Parchment." It has been cut to the size of genuine United States currency. It was seized with the other pieces of paper from the two defendants.

Defendants' Exhibits 2, 3, 4 and 5 are pieces of what appear to be white bond paper. Two have no water mark. One is watermarked "Eaton's Eminence Bond," and one bears a portion of a watermark which reads "U.P.S.A." Each of these Exhibits were among the other paper seized of the defendants. They have points of similarity to the distinc-
98 tive paper adopted by the Government. Some of them could be made adaptable for the purpose of making United States Government Obligations or securities. It is a question of how they would take inks. Among other things, they would have to be made of the proper size. They would have to bear something acceptable in similitude to the red and blue lines which are the distinctive characteristic of the Government paper. They would have, necessarily, to be suitable as to ink absorbent quality and their ability to take the sizing and other treatments which are employed in the printing of the genuine currency.

If some of these Exhibits were immersed in water for a few minutes they would retain their form, in my opinion.

The witness was handed a glass of water, selected Exhibits 1 and 1-A, and put them in the water at two thirty-seven P. M.

Q. Now, do you know what goes into the formula of the distinctive paper, adopted by the Government, about which we have been speaking.

A. I have never seen it manufactured.

Q. You have never seen it manufactured. Do you have any sample of it here?

A. I have currency on which the impression has been printed.

Q. You have no blank sheet of it here—

A. I have not.

Q. (Continued)—that had not been used in printing, or anything like that?

A. I have not.

Q. Isn't it a fact, if you did have a blank sheet of this distinctive Government paper and placed it side by side with any of the exhibits offered in this case, that there is a
99 noticeable distinction and difference in that paper—that there would be?

A. That is, between these which I have?

Q. Between any of the exhibits, which you have out here, and the distinctive Government paper.

A. Yes, I would notice a difference.

Q. Now, tell the jury what sort the differences are that you would notice.

A. The difference that occurs to me first is that the genuine Government paper is interspersed with red and blue curls or twists, whereas I fail to find them in any of these.

Q. What are those red and blue curls? What are they made of?

A. They are silk fibers.

Q. Are they put in the Government paper by a special process?

A. They are put in the molten pulp and worked through the paper.

Q. That is a distinctive and expensive process in manufacturing paper, is it not?

A. I don't know anything about the cost accounting.

Q. It is supposed to be a secret process, isn't it?

A. I can't answer that.

On Saturday, October third I received a telephone call at my home from Cones which was my first knowledge of the affair. I made an appointment to meet Cones in the Secret Service office on Monday evening, October fifth. I met Cones at that time.

What I call an impression is a reproduction in reverse of that which appears on the face and on the back of a genuine United States bill, made by what is known to us as the transfer method, and, likewise, as the transfer method of counterfeiting, on occasion. Government Exhibits 1 and 2 are what

I refer to as the impressions. In my opinion it is a likeness of money.

100 It has a border like the genuine bill; it has the numerals in the corners; it has the reproduction of the lathe work; it has the Federal Reserve seal; it reproduces the signatures of the Secretary of the Treasury—the Treasurer of the United States; it has the legend letters, "Twenty"; it has, in all the four corners, the designating numeral of the Chicago Federal Reserve Bank.

Q. Now, then, the position of the figure "20" on that Exhibit 1 or 2, whichever it is, is in reverse, isn't it, and appears as "02" backwards?

A. It does.

Q. Is there anything about it, in your opinion, that is, calculated to deceive anyone into thinking that that is meant to be "20"?

A. Yes, if one reads the "2" as anything at all, one must recognize that it is a part of the figure "20" in reverse.

Q. In order to deceive anyone into thinking that it was money—what you have there—it would have to be changed about,—

A. It would.

Q. (Continued.) —wouldn't it?

A. It would.

Q. In its present form, there isn't anything about that that could deceive anyone into thinking that it was money, could it?

A. No.

The Court: Does the statute say or the courts hold that that impression has to be such that it would lead a person to believe it was money? As I understand it, it is an impression from which money might be made.

101 Mr. Jeffrey: That is right.

The Court: Now, if you could take those two impressions and put a piece of paper between them, which was adapted to making money, and transfer those impressions, then, to that piece of paper, wouldn't that make a twenty dollar bill? That is my thought as to what that statute means. It doesn't mean that the impression has to be such that you would construe it to be money.

Mr. Jeffrey: But the impression has to be such as might be used in the making of money.

The Court: All right.

The impression isn't as distinct as the original. If any

other transfer or impression was made from that it would still be more indistinct. This impression could not be transferred to any other piece of paper and made as distinct as it now is unless they would attach it. It couldn't be made any more distinct than the original, of course—than the piece that is here. The reasons I call Exhibits 1 and 2 impressions is that I don't feel that distinctness has anything to do with the definition of the word "impression". If it were recognizable at all, in my opinion it would be an impression from the original from which it was reproduced. A "transfer" impression is the term I intended to use. My idea of the definition of an impression is, I would presume the dictionary would say, "that which is impressed."

Q. It is something beneath the surface, isn't it, some dot or line pushed underneath the surface?

A. I think the definition would be, "the depression in the inside of an impression."

Q. Well, now, what that is there is neither a depression nor an impression. It is really something placed on top, 102 isn't it,—what you have in your hand—a transfer of ink on to something else?

A. It is superimposed on the paper.

Q. It is superimposed, isn't it, and, then, it is really, you might say, an expression, if anything, instead of an impression, isn't it?

A. I think our orthography is getting a little beyond me.

Mr. Jeffrey: He has testified that these were impressions, and I am trying to see whether they are or not. Maybe they are and maybe they are not. That is what I am trying to do.

The Witness: I don't know what the word "expression" would mean in this case, but it is an imprint—it is a reproduction in reverse, and that, in my opinion, is an impression in reverse.

Q. In making whatever Exhibits 1 and 2 may be, there was no metal at all used, was there?

A. No.

Q. Whatever appears there is taken entirely from another piece of paper by some method of transfer? Is that right?

A. That is right.

Q. There never was, at any time, any kind of an instrument used which might make an imprint or impression beneath the surface of that paper? Is that right?

A. In all likelihood, some of this ink, which is transferred, is beneath the surface of the paper. That is the usual experience when ink is transferred.

Mr. Jeffrey: I move to strike the answer out, your Honor.

The Court: Just answer the questions. Go ahead.

At seven minutes to three P. M. the witness removed Exhibits 1 and 1-A from the water, examined the wetted
103 portions of them and tore off a small piece from each end.

From your experience with Government paper, would a Government paper or piece of paper money, if placed in the water there like that for that length of time, have torn that easily?

A. I have never torn paper money that was soaked for fifteen minutes.

Q. Would it be as limp or lifeless as that paper is, there, now?

A. I have never immersed a bill in a glass of water for fifteen minutes.

Q. Will you take one of those exhibits by the dry end and hold it up so that the limp end may be seen? (The witness attempted to comply with the request of counsel.) No, the other way—the limp end up, please. I want you to hold it by the dry end so that you can see what the limp end does—whether it has any body to it. (The witness complied with the request of counsel). After having seen that paper there and seen what the water does to it, would you say that either the Defendants' Exhibit 1 or the Defendants' Exhibit 1-A is such paper as is adapted to the making of Government obligations?

Any of these exhibits is the kind of paper that Exhibits 1 and 1-A are on. I didn't learn anything from these papers which told me what (Government) Exhibits 1 and 2 will do because they are not the same kind of paper. Government's Exhibits 1 and 2 are neither one of them of any paper that is adapted to Government use. Government's Exhibit 3 is paper which is adapted to Government use. It differs from defendants' Exhibits 1 and 2 in that it is impregnated with

the distinguishing feature of Government paper, the first
104 distinguishing feature, which is the red and blue curls.

You need an analysis to determine what makes the red and blue curls that are on Government's Exhibit 3. I can recognize them as being similar in appearance. By looking at them I can tell they are drawn on the surface of the paper,

but by looking at them with a glass they are still sufficiently deceptive to me that I couldn't state positively what makes them. I think they might be ordinary blue marks of a blue pencil but I wouldn't state that positively. I could tell by tearing the paper whether they are silk threads. They would deceive me under casual observation. If the marks were put there by crayon or red and blue pencil, they have been there for more than a month and aren't blurred and haven't disappeared. It would take an actual test, I should think to find out if they would blur or disappear by handling.

Q. Well, now, do you undertake to tell the jury that one of those pieces of paper, which you have there, may not be adapted to use as a Government obligation, but, by putting some of those red and blue marks on them, that that adapts them to the use?

A. This piece was apparently adapted by that simple expedient.

Q. Is it adapted for the use as Government paper?

A. If it has the other necessary qualification.

Q. Aside from the red and blue marks, the paper is the same as Defendants' Exhibits 1 and 2, or one of them, is it not? Can you examine these and say whether or not it is the same quality?

A. Exhibit 3 is the same as 1 and 2?

Q. Yes.

A. Oh, no.

Q. What is the difference between Government's Ex-
105 hibit 3 and Defendants' Exhibits 1 and 2?

A. I confused Defendants' and Government's exhibits. You say if the Government's Exhibit 3—

Q. Yes.

A. (Continued.) —is the same as—

Q. Is the same quality and type of paper as either the Defendants' Exhibit 1 or Defendants' Exhibit 2.

A. Well, it is a part rag bond paper, which crinkles in the same way. As to chemical content, I couldn't answer that. A chemist would really have to analyze it.

Q. Well, then, you don't undertake to testify, at this time, what kind of paper that Government's Exhibit 3 is, do you?

A. No.

Q. You haven't had it analyzed?

A. I have not.

Q. And you don't know what the rag content of it is? Is that right?

A. That is right.

Q. And you don't know anything about that piece of paper, Government's Exhibit 3, except that it crinkles and crackles and has some blue and red marks on it and that that adapts it to use as a Government obligation? Is that right?

A. It has that and the other features that I have previously mentioned in my testimony.

It is approximately the same weight, I did weigh a piece of the same size as against a piece of genuine currency, and the slight difference that existed would probably be accounted for by the addition of the ink to the genuine bill. I
106 didn't caliper it or make any test if it was thinner than is the Government paper.

Returning to the Government's Exhibits 1 and 2, anything written there which is not to be read is simply an impression. There are such things as the lathe work on the border of the bill, and certain parts of that are the same, whichever way you look at them, frontward or backward. I would have to take a glass to read some of the finer print or some of the smaller words on the Government's Exhibits 1 and 2. I can read "United States of America," "Federal Reserve Note," "20," "Washington, D. C.," "G," which is the Treasury or the Federal Reserve Seal. The parts which are small I would have trouble reading if they were not in reverse. In reverse, of course, it is confusing.

Q. Then all of those which you have said that you have read, you have used the reflex powers of your mind to look at them backwards—they are all reversed on the paper?

A. Yes, sir.

Q. The small parts, you can't read, can you, without a looking glass or a mirror or a magnifying glass?

A. No.

There was no kind of a plate or an engraving used in making either of those (Government) Exhibits 1 or 2. The Government does not use paper which has no silk fibers in it for making Government obligations or securities for the printing of money. I would rather tear Government's Exhibit 3 to be positive of whether those are silk fibers.

Q. If there is no objection, Mr. Witness, I would like to have you take Exhibit 3 and make some such a test, or any test you wish, there, to determine whether those are silk
107 fibers or crayon marks or what they are.

A. I should like to have a pin, if I may do that.

Mr. Caughran: If the Court please, I feel that this is

objectionable for the reason that the witness has testified that, in his opinion, this paper is similar to the Government paper—genuine Government paper—and he has not said it is similar in every respect, but he has named a number of respects in which it is similar, and I don't believe that—

The Court: I think he testified it was similar to the extent that it would be deceiving to a person of ordinary—

Mr. Caughran: That is it exactly.

The Court: That is the intention of the statute.

Mr. Caughran: That is it exactly. Chemically, we don't claim that it is the same.

The Court: It doesn't have to be, as I understand that statute.

Mr. Jeffrey: It has to be suitable for use.

Mr. Caughran: It has to be similar to and suitable for use. Now, of course, if we had to have silk threads running through it, it would mean that we would have to have a Government formula, a Government paper, really, before one could be guilty of this offense. It isn't the theory, in this case, at all, that this is genuine paper.

The Court: That is all contained in the statute, and the statute has reference to paper which could be used and would be so similar, if it was used to make money, that it would deceive a person of ordinary understanding. That is your theory in questioning about whether or not it would deceive anyone?

Mr. Jeffrey: No, your Honor, courts have held that it has to be adapted to use and that being similar enough to
108 deceive someone is not sufficient.

The Court: You asked that question a while ago.

Mr. Jeffrey: All right. Well, may I have the witness tear the paper and tell me whether there are silk threads in the paper, or put a pin point in it or whatever he wants to do?

The Court: Whatever examination you want to make, Mr. Witness.

The Witness: With a pin, you could lift out the silk fibers. That is about the best way to test it. I would like to have just an ordinary pin, if you have one.

A Juror: Here is one. (Handing pin to witness.)

The Witness: Thank you.

Mr. Pfister: If the Court please, Mr. Nolan suggests that the jury ought to be permitted to see that paper before any alterations are made on it.

The Court: He isn't going to make enough to destroy it.

The Witness: I have dug into the paper, on one of the lines, and find that it is not solid matter; it is something on the surface of the paper.

Q. It hasn't any silk thread in there?

A. It isn't a thread.

The first time he made the demonstration was the only time he reported that he was giving me anything other than a genuine Government paper. He did represent to me that it was one that he had made, himself, when as a matter of fact, it was a genuine United States obligation. Government's Exhibits 1 and 2 were taken from Government's Exhibit 4, not from Government's Exhibit 5, which has a paper pasted over the serial number of the bill, superimposed, but if you will take off the strips that are superimposed on that, I think you will find underneath at least some of the 109 serial numbering because the one which was used did not have the serial numbering covered up, but actually did transfer the serial number. The Federal Reserve twenty dollar note that was actually used in making the transfers or impressions on the Government's Exhibits 1 and 2 did not have any strips of paper superimposed over the serial number. No impressions of any kind were ever produced by either of these defendants in the positive form except for a faint impression which came off of one of them, just by a casual contact onto Exhibit 3. You can see where it is in the positive form. The impressions referred to by me are in the negative form.

Redirect Examination by Mr. Pfister.

Government's Exhibits 1 and 2 were between two of the blotters which were torn by the defendant Fowler in the scuffle for possession of them at the time he was placed under arrest, and just one corner of those blotters was torn and those exhibits along with them.

Recross Examination by Mr. Jeffrey.

The particular line I had under examination on Government's Exhibit 3 was not a silk thread; it was a surface line of some sort. The Government does not use any paper for printing its currency and bonds unless the paper has silk threads in it.

110 JOHN O. BURTON, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Caughran.

My name is John O. Burton. I live at Washington, D. C. I am a chemist connected with the United States Government in the Treasury Department, Bureau of Engraving and Printing. There is where all valuable securities and currency of the United States are printed. I have been there a year and two months. Previously I worked at the Naval Research Laboratory and the Bureau of Standards of the Department of Commerce. The Bureau of Standards of the Department of Commerce does work for the Treasury Department pertaining to analysis of different kinds of papers. That was my major duty for four years. I have studied many kinds of papers. My main duty now is to examine all materials for the manufacture of currency and securities which are delivered to the Bureau of Engraving, to see that they meet the specifications under which they are purchased. The Government obtains the paper upon which the obligations of the United States are printed on an annual contract from a private concern. To describe the process by which that paper is manufactured and transmitted to the Treasury Department, Bureau of Printing and Engraving, it is made on an ordinary paper machine, a Ford-Rinier paper machine. As soon as it comes off of the machine, it is put under Government guard, cut to the size specified by the Government, put in wooden cases which are sealed, the wooden cases put in freight cars which, in turn, are sealed and they are delivered to the Paper Custodian in the Treasury Department, in Washington.

That process of transfer is all made under guard. The Government of the United States is the only individual or organization or corporation in the United States which is permitted to have any of the paper that the Government
111 does use. Prior to October 9, 1936 the Secretary of the Treasury had adopted a distinctive paper for the making of obligations of the United States, including twenty dollar notes. The present paper was adopted about 1928. The Secretary of the Treasury at no time, either before the distinctive paper is delivered to the Bureau of Printing and En-

graving or thereafter, ever allows any of that paper to be distributed or to be handed out to private individuals or to anyone else. I have with me some of the genuine paper upon which the Government prints its twenty dollar bills, and other bills. It is Exhibit No. 28 and is United States currency paper—distinctive paper which was adopted by the Secretary of the Treasury about 1928. It is a high grade rag bond paper with silk fibers distributed throughout—short, fine silk fibers. The distinguishing features made noticeable without an analysis are a sharp rattle and very little gloss. The most distinguishing feature is the red and blue fibers visible to the naked eye, resembling, without careful examination, red and blue lines.

Government's Exhibit No. 3 is similar to Exhibit No. 28, genuine Government paper. The first thing noticeable is the red and blue lines on the surface. It is approximately the same weight; approximately the same thickness; it isn't pure white paper, which is also similar to currency paper. It has approximately the same gloss and I should say approximately the same opacity, and, rattle which go with a bond paper.

Government Exhibit 3 is adapted to the making of obligations and other securities of the United States.

Q. Now, why do you say that?

A. Because most any bond paper could be used for the printing of securities.

The additional feature Exhibit No. 3 bears, that ordinary bond paper does not have, are the red and blue fibers.

112 I have had some experience since I have been with the Treasury Department with counterfeit paper money. I have examined twenty to twenty-five different samples of it. Counterfeit money is not ordinarily made upon genuine Government paper.

Q. From your experience with counterfeit money and your other experiences in the Treasury Department, analyzing paper and so on, state whether or not, in your opinion, if the Government Exhibit No. 3 were taken to the Bureau of Printing and Engraving in Washington and there printed into a twenty dollar Treasury note, that paper, Exhibit 3, is such a paper that would pass currency in the general trade of the country.

Mr. Jeffrey: Now, to which, your Honor, the defendants object because the question has reference to counterfeit money, and the fact that this paper in Exhibit 3 might or

might not be suitable for use in counterfeit money has nothing to do with this case and does not in any way tend to prove that it is adaptable to use for the printing of real obligations of the United States.

The Court: Read the question.

Mr. Caughran: Begin with "your experience." Is that satisfactory?

(The Reporter read the preceding question, amended as follows: "From your experiences in the Treasury Department, analyzing paper and so on, state whether or not, in your opinion, if the Government Exhibit No. 3 were taken to the Bureau of Printing and Engraving in Washington and there printed into a twenty dollar Treasury note, that paper, Exhibit 3, is such a paper that would pass currency in the 113 general trade of the country.")

A. It is.

Mr. Jeffrey: I object to that, your Honor, because it is not the test, in this case, whether it would pass currency. The test in this case is whether that piece of paper is adapted to the making of Government obligations and securities.

The Court: Well, this would be one test of it. That is, perhaps, one test. Go ahead and answer the question.

Mr. Jeffrey: May I have an exception to that?

The Court: Yes.

A. In my opinion, it is.

Cross-Examination by Mr. Jeffrey.

I do not know whether the red and blue lines on Exhibit 3 are silk fibers. I have not examined it with care to determine that. Under the glass they have approximately the appearance of a fiber.

I cannot tell by looking closely that they are pencil marks. I could determine by a test whether they are fiber or pencil marks. It was submitted to me for an examination and I looked at it here in Indianapolis. I didn't take it and really determine the chemical contents or the rag content or make any careful or complete examination so that I could tell whether those were red and blue fibers or blue and red pencil marks. I did not have access to the sample.

The precautions about Government paper are taken to have a distinctive paper which will offer as many difficulties as possible to reproduce, and also make as high grade and as

strong a paper. The silk threads are not put in there to
114 hold it together and keep it from getting limp when it becomes wet, but to identify it. It is not the rag content that keeps it from becoming limp when wet. It is the sizing. Defendants' Exhibits 1 and 1-A are different from Government's Exhibit 3 in that they have a water mark which Government's Exhibit 3 does not have. By watermark we mean a thin place in the paper made when the sheet is wet on the machine, so that, when held up to the light, it is more transparent than the rest of the paper and shows up as a word or design. That name is a watermark. That could not necessarily be cut off of Exhibit 3 so that it would not show. It all depends on how close that watermark is put in that paper. Government's Exhibit 3 is not quite as white as the other two exhibits. It has more of a yellowish tinge. I don't know whether that would come through ordinary typewriting paper having become wet.

Defendants' Exhibits 1 and 2 are such stock or bond as is ordinarily used for typewriting paper. I cannot detect any difference in color between where they were wet and dry.

Those two exhibits are about the same weight and thickness. The Government's Exhibit feels smoother and I believe has lower opacity than the defendants' exhibits 1 and two.

I don't believe defendants' exhibits 1 and 2, or a paper similar to them, without the name on there and with the blue and red pencil marks placed on there like Government's Exhibit 3, would be quite as adaptable to making Government's obligations as is Exhibit 3.

Q. But they would be adapted under the definitions you have given, wouldn't they?

A. Yes, sir.

Q. Then, under your definition, you can go into any
115 bookstore or place where they sell a good high quality bond typewriting paper and purchase paper which is, or can be, adapted to the making of Government obligations? Is that true?

A. Yes, sir.

Q. Would it, in its present form, be adapted, or what, if anything, would be necessary to adapt it to making Government obligations?

A. A good high grade bond paper, without a water mark, could be made distinctive with red and blue lines, in some way, and would then be suitable and adaptable for the manu-

facture of Government securities which would pass in the ordinary run of commerce, I believe.

Q. Does the Government ever print any money or bonds or obligations on that type of paper that you would get in a book store?

A. They print it on only the one kind.

Q. Only one kind. Why do they only print it on that one kind?

A. Because it is the distinctive paper that is legally required for the printing of Government securities.

Q. If any other company or book store undertook to sell any of this paper, which they have in stock and which is a good quality of bond typewriting paper, to the Government for the printing of Government obligations, the Government would not buy it, would it?

A: No, sir.

Q. Why?

A. Because it did not have the control of their guards at their mill and it doesn't have the red and blue silk fiber.

Q. And that paper would not be adapted to making 116 Government obligations? Is that right?

A. Not without red and blue fibers or lines.

Q. Well, now, do I understand that it doesn't make any difference whether those red and blue lines are superimposed in pencil or whether they are built into the paper, as it is manufactured, with silk threads?

A. If it is done cleverly enough, it could be put on the surface with a pencil and would pass casual observation.

Q. But the Government would not use any paper like that for printing obligations, would it?

A. No, sir.

Q. In order to conform to the Government regulations and the distinctive paper adopted by the Secretary of the Treasury, it must have the silk fibers in it?

A. Yes, sir.

The Court: Of course, in that event, it wouldn't be similar. The word "similar," in the statute means something. If it had to be the same paper, why, of course, there would be no offense, but it is similar paper.

The Government paper is rather tough and hard to tear. I have made a slight tear in the Government's Exhibit 3 to see whether it tears more easily than Government paper would. There isn't a great deal of difference. Government paper if crumpled up and smoothed out, leaves a crease. It

stays wrinkled up. Government paper is not designed and intended to withstand continuous wetting. It will not stand more wetting than most any other type of paper. I couldn't say whether it would stand more wetting without going to pieces than ordinary bond typewriter paper would, such as defendants' Exhibits 1 and 2. I never tested it for that
117 purpose. The Government does not wash its paper any nor clean it.

Q. It doesn't clean it. Would the Government paper, such as you have there and which is marked Exhibit 28, be suitable for ordinary use as typewriter paper?

A. Yes, sir.

Q. It would be rather expensive for that, though, would it not?

The Court: Of course, they couldn't get it. It isn't on the market, is it?

The Witness: A paper similar to it is.

The Government paper is not heavier and stiffer than any paper that is ordinarily used in a typewriter. There are many bond typewriter papers that are the same weight and thickness, or even greater than the Government paper. I have to return Government's Exhibit 28 to the Treasury.

(At the suggestion of the Court, and without objection, Government's Exhibit 28 was permitted to be exhibited to the jury, and then to be withdrawn from the record. At this time it, and Government's Exhibit 3, and the Exhibits 1 and 2 were exhibited to the jury.)

The distinctive feature about Government's Exhibit 3 are those little red and blue marks on there. That feature, and other similarities with currency paper are what, in my opinion, adapted it to the making of a Government obligation. I believe I mentioned several characteristics of that paper which would adapt it to a currency paper.

Q. But not without the red and blue marks?

A. Well,—

The Court: Of course, the red and blue marks are on there.

Mr. Jeffrey: Yes, sir.

118 Q. But what I am trying to ask you is this: If the red and blue marks did not appear on Government's Exhibit 3, then it would not be a paper adapted to the making of Government obligations, would it?

A. You could print them on it, but you could tell that it

was not the Government paper by the fact that there were no red and blue marks on it.

Q. Well, then, it would not be adapted to making Government obligations, would it?

A. You could print them on it and get just as good an impression and just as good a printing quality.

Q. I understand that, but bear in mind, please, that the Secretary of the Treasury has adopted a standard for making Government obligations. Now, that is true, isn't it, and, with reference to Government's Exhibit 3, it is not adaptable to such uses as are designed for that paper or for the making of Government obligations, unless it has those red and blue marks on there, is it?

A. Well, you could immediately tell that it wasn't, without the red and blue lines on it. It is adaptable in that you can print just as good on it.

Q. There isn't any paper that can be adapted to the making of obligations of the United States unless it conforms to the standard set by the Secretary of the Treasury, is there?

Mr. Caughran: If the Court please, that is an argument with this witness. I don't think it is proper.

The Court: Overruled. Go ahead and answer it.

A. Well, in my mind, the term "adaptable" means that it can be adaptable in some senses and not in others.
119 It cannot, if it is not absolutely adaptable—adaptable in every respect to the manufacture of currency.

Q. The Secretary of the Treasury has set a standard for paper, which he requires to be used in making obligations of the United States? Is that true?

A. Yes, sir.

Q. Now, the Government's Exhibit 3 would not conform to that standard unless it had some red and blue marks on it, would it?

A. No, sir.

Q. And without the red and blue marks on it, it would not be adaptable, then, to make Government obligations which are made by that standard of distinctive paper, would it?

A. By that standard, it would not be adaptable.

Q. Then you can take any ordinary piece of typewriter paper that is good quality stock, a bond such as Exhibit 3 or the Defendants' Exhibits 1 and 2 and such as you can buy in any store, and make it adapted to the making of obligations of the United States by skillfully placing the same red and blue lines on it? Is that true?

A. Not any paper, no, sir.
Q. Such as the grade that we have in mind, there?
A. Paper similar to that, yes.
Q. Yes.
A. Paper of that type could be.

They do not place red and blue pencil marks on the Government paper instead of building the silk fibers into it because it would be too easy to duplicate. Government paper doesn't consist of two pieces of paper fastened together.
120 A Government bill can be split and have two pieces of paper. It is split by wetting it and gradually working it apart. The two layers are separate. It has two surfaces. That is caused by the sizing of the paper. I could not say whether Government's Exhibit 3 could be taken and split. I made no test to determine that. I do not know whether a good quality typewriter paper, such as Eaton's Eminence Bond would have the same life, if carried around in the pocket, just the same as a dollar bill, or whether it would stand up just as long under the handling and carrying. I haven't tested it for strength. I wouldn't think a typewriter paper would break and holes appear in it if carried in the pocket for a few days. I would say several bond papers would have as good wearing qualities.

The Court: This paper that is printed into money: is it sized and treated in some way so as to prevent tearing?

The Witness: It is sized, yes, sir.

More precaution is taken to make it last a long time so that it will stand a lot of hard ordinary every day use. Some of these precautions are taken with the average good grade of bond paper. That is the purpose of bond paper.

I have no way of telling, without testing it, whether Government's Exhibit 3 is paper of a quality inferior to the paper in Government's Exhibit 28 or whether it is of equal quality. It has an appearance of being approximately the same type of paper, but I have not made any test of that and can't tell if it is the same or not. I am not prepared to tell the jury, at this time, that it is the same quality. I couldn't tell that. With reference to whether the red and blue marks on Government's Exhibit 3 could be erased easily if they are merely pencil marks, certain kinds of pencil marks can be erased. If it is a crayon with wax in it, it could not be erased readily. If it is a crayon with a dry pigment,
121 that could be erased. I don't know what kind of marks those are on there.

If they are marks that can be erased, then Government's Exhibit 3, would not, after the erasing, be suitable or adapted to the making Government obligations.

Not under the standard set up by the Secretary of the Treasury requiring the red and blue markings on it.

Government's Exhibit 3 can be made adaptable, or not adaptable, by using or taking off the red and blue marks, in regard to that distinctive feature of it.

(The witness is handed the original indictment and examines the front sheet of it with reference to the quality of the paper, at the request of counsel.)

It is a pretty good grade of rag bond. Having in mind the regulations and requirements of the Secretary of the Treasury, which have been adopted by him for paper used in the making of Government obligations, the first sheet of the indictment is similar to the distinctive paper of the Government in many respects, and could be made adaptable to making Government obligations by the addition of red and blue markings of some sort, by pencil or otherwise.

Q. And you make that statement in spite of the fact that the regulations of the Secretary of the Treasury require that this distinctive paper have silk red and blue threads in it?

A. Yes, sir.

Q. And regardless of that, then, in your opinion, if this paper were taken and pencil blue and red marks put on it, it would be such as to conform with the regulations adopted by the Secretary of the Treasury?

A. No, sir, it would not conform with the Treasury's requirement.

Q. And it would not be used by the Secretary of the
122 Treasury in printing obligations?

A. No, sir.

Q. Then it would not be adapted, and could not be adapted, to the making of those Government obligations merely by the adding of the blue and red pencil marks?

A. Not by the Treasury Department.

Q. And if those marks on Government's Exhibit 3 are red and blue pencil marks and not silk threads, then the Government's Exhibit 3 is not adaptable for the use or for the making of Government obligations, under the rules adopted by the Secretary of the Treasury for that distinctive paper? Is that true?

Mr. Caughran: If your Honor please, we object to the question because it is not the contention, and the witness has

not said, that the Government would ever take this particular piece of paper, Exhibit 3, and print a bill on it.

The Court: Well, of course, that is the very purpose of this statute. It is not genuine paper, of course. That is the very purpose of this statute. It is "similar and adapted to," I have said, two or three times, it wouldn't have to be exactly the same paper. That is not what the statute says and it is not what the courts have held on this subject.

Mr. Jeffrey: Well, does the Court sustain the objection?

The Court: Objection sustained, yes.

Mr. Jeffrey: May I have an exception to that?

The Court: Yes.

Mr. Jeffrey: Now, I would like to ask the witness to do one thing, if I may: to take the Government's Exhibit 3 and, without defacing it or anything, pick out one of those marks and take a clean eraser and see if he can erase it.

123 Mr. Caughran: I don't see that that has anything to do with this case at all.

The Court: Oh, he testified a moment ago—this, perhaps, hasn't anything to do with it—that certain kinds of pencil marks are more easily erased than others.

Mr. Jeffrey: My contention is this: that the Government is charged with the burden of proving that this paper is a distinctive paper and adapted to use in making Government obligations. Now, I say that the burden is on them to show what the paper is. They have not undertaken to analyze it. They have not undertaken to tell what the marks are.

The Court: I don't think it has anything to do with it at all, as far as that is concerned. I don't think the fact that it might be easily erased has anything to do with it.

Mr. Jeffrey: Well, as a question, then,—

Q. Mr. Witness, will you please take Government's Exhibit 3—now, don't do this yet—it is just a question. Will you please take Government's Exhibit 3 and take an eraser and endeavor to erase one of those red and blue markings, and see if you can erase it from the surface of that paper?

Mr. Caughran: To which we object for the reason that—

The Court: Objection sustained.

Mr. Jeffrey: May I have an exception?

The Court: All right.

Redirect Examination by Mr. Caughran.

The Secretary of the Treasury has the exclusive control over that specially adopted paper from the time it is manufactured and printed until it goes out in the currency of the country. No one else has any authority to do anything else with that paper, only under his direction. No one, under his direction, ever allows any of that paper to get out of the
124 Treasury Department, except for the purposes for which it was intended, under his authority.

The Court: You may take that paper with you. Let the record show, at this time, that Exhibit No. 28 is not read in evidence because of the fact that it is the original paper, brought here by the representative of the Treasury Department, but it has been exhibited to the jury along with Exhibit No. 3 of the Government and Exhibits 1 and 1-A of the defendants.

Mr. Jeffrey: That will be agreeable to the defendants.

If I may, I would like to ask one more question of the witness.

The Court: Just ask it, and you may answer it from where you are, Mr. Witness.

Q. Mr. Witness, the Government only has one standard of paper which it has adopted? Is that true?

A. For the printing of bonds and currency.

Q. And this piece of paper you brought here is not distinctive in any way from any other piece of paper that you would get from any other branch of the Government for the printing of paper money? Is that true?

A. No, that is exactly—

Q. In other words, if, at any time, we should want to produce a piece of genuine Government paper, it would be exactly like that, there?

A. Genuine currency paper, yes, sir.

Q. That is what I am trying to get at.

The Court: Unless the Secretary of the Treasury would change that.

Mr. Jeffrey: Yes, sir, that is true. Well, then, with that in mind, we have no objection to the exhibit being withdrawn.

125 And the United States here rested.

Mr. Jeffrey: I want to file a motion for a directed verdict.

The Court: I will overrule it.
Mr. Jeffrey: An exception, please.
The Court: Yes.

Whereupon, the defendants, to maintain the issues on their behalf, offered and introduced the following evidence, to-wit:

JOHN W. KELLER, a witness called on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Jeffrey.

My name is John W. Keller. I am assistant cashier of the Indiana National Bank. I have been with that bank twenty-four years and have had considerable experience in handling currency of the United States and its other paper obligations. I have familiarized myself to a certain extent with the touch and quality of that paper so that I can tell it from other kinds of paper.

I am not an expert on it or anything like that, but, just from the general feel, there is a difference between Government paper and other paper. Ordinarily it is the stiffness to it and yet, when the Government paper is old, it doesn't seem to tear quite as easy as other paper does.

When the Government paper is new, the way I am most used to handling it and is the way it comes into the bank, your fives are done up in a hundred fives in one package, making the five hundred dollars, and the same way all the way
126 through. It is done up in five hundred dollar packages with the exception of ones. They come in hundred dollar packages. The first thing you notice, as you count them off, is that snap to them and they are inclined to stick together a little bit, due to the fact that they have probably been put in bundles so tight, with pressure on them, that it has naturally made that condition, and, as they got older, that stiffness, of course, naturally is gone, yet there is a certain quality of the paper that holds up better than the average paper. Now, to describe that quality, I can't do it because I am not an expert on it. It just comes from handling the money so often and so much that we get the feel of it, but, to actually describe it in so many words, why, I am not capable of doing that.

I have read in some magazine, possibly Burroughs Clearing House magazine or Federal Reserve Bank magazine that the average life of a bill is around sixty days. It would depend

on how much it was handled. I have never seen holes worn in Government paper or currency. It keeps its edge fairly well instead of becoming frayed.

I have in my hands Government's Exhibit 28, and I cannot swear what it is but I heard the witness say it was United States Government paper. It feels like new currency as it comes in. Of course, you can see these marks on here of the silk thread. They are very easily distinguishable.

Comparing Government's Exhibits 28 and 3, the dissimilarity in it would be that it doesn't seem to me as being as heavy a quality as the other paper. I see some marks of some sort here. As to whether or not they are threads, I wouldn't particularly say they were threads, I would hesitate in saying by a closer examination with a glass what they are because I am not an expert.

127 Holding the two papers up to a light, I can see through Government's Exhibit 28 and see the silk threads in it.

You can't see silk threads in Government's Exhibit 3, although I believe I can see those markings through the light. Any distinction between the markings and the silk threads in Government's Exhibit 28 is that one is a mark and the other is a thread. If I were allowed to take an eraser and try to erase one, if it would erase, we would naturally know it was pencil. It wouldn't erase if it was a silk thread.

Mr. Jeffrey: Now, if the Court please, I ask that the witness be permitted to take an eraser and see if he can do that.

The Court: Oh, I think it isn't a question of whether it will erase or not. It is how it would appear to a person as he looks at it.

Mr. Jeffrey: I understand that.

The Court: You might be able to pull some of those threads out. I don't know.

Mr. Jeffrey: The point I was making is that I would like for this witness to be enabled to determine and tell the jury whether or not those are silk threads or merely pencil marks.

The Court: Well, I don't think there is any contention that they are silk threads.

Mr. Caughran: Not at all. There is no contention of that kind at all.

Mr. Jeffrey: All right. Then we will save a little time if the Government will agree that those are not silk threads.

Mr. Caughran: All right, we will agree that those are not silk threads.

Mr. Jeffrey: The record shows that as a stipulation:
128 that those are not silk threads in Government's Exhibit 3?

Mr. Caughran: That is right.

To me there seems to be a difference in the feel or in the touch between Government's Exhibits 3 and 28. The particular difference, is in the grade of the paper, and bear in mind I am not an expert, but, to me, the Government paper is a little stiffer than this other paper.

I have in my hand Defendants' Exhibits 1 and 1-A and 4. Comparing them with the touch or feel of Government's Exhibit 3, Government's Exhibit 3 corresponds more to Defendants' Exhibit 1 than the other two, apparently, with this exception: that possibly from handling, Government's Exhibit 3 is not quite as white as the other three papers that I have in my hand.

Government's Exhibit 3 and Defendants' Exhibit 1-A correspond substantially in quality and in touch, as far as I can tell.

Government's Exhibit No. 3 and (Defendants') Exhibit 1-A, in my feel, correspond more than they do to (Government's) Exhibit 28. The main trouble I find in all of these is this; that the Government's paper, to me, is a little stiffer, coarser than any of the other Exhibits. I do not know whether Government paper is ever washed but some years ago, when we tried it at the bank, it was very unsuccessful.

On Defendants' Exhibit 1-A it says Horder's Parchment. I don't see any water mark on Government's Exhibit 3.

Comparing Defendants' Exhibits 7 and 8 as to the type and quality of paper with Defendants' Exhibit 1-A, Exhibits 1-A and 8 seem to be of a similar feel, but Exhibit No. 7 doesn't. However, the water mark apparently seems to be the same. I am just going by the way this feels to me. I don't know anything about the quality of the paper. I
129 am just telling you the way it feels. I don't know what constitutes the makeup of Government paper, but I am familiar with the fact that there is one certain paper that is used and no one else is allowed to use it.

Q. I will ask you to state what, if anything, there is about it, that would make that good for paper money and what, if anything, there is about it what would make it unsuitable for use by the Government as paper money.

A. Assuming that there is only one certain paper which the Government can make their money on, on their bonds,

naturally, unless the paper is genuine and the same paper as that, it isn't adaptable for making their money or bonds on, yet there can be another paper that is a likeness of it, but, so far as being adapted for it, if the Government says they can only use one certain paper, that is the only paper that is going to be adapted for it.

Q. Now, you don't know, other than what you have heard here, why the Government would set down specific regulations in adopting that one paper, do you?

A. Well, I have heard that, of course, before: that that is the primary reason.

Q. Well, now, assuming that the Government's Exhibit 3—assume, for the moment, that the Government's Exhibit 3 does not correspond to the regulations adopted by the Treasury for the making of money, and, as you have heard, it does not have the silk threads in it, you may state whether, in your opinion, taking that piece of paper and putting red and blue crayon or pencil marks on it would make it suitable for use as Government currency or money.

A. I will have to answer that a little bit different. So far as the Treasury of the United States is con-
130 cerned, it would not be suited. So far as the average layman was concerned, possibly it would be.

Q. You mean, maybe, for making counterfeit money?

A. That is right.

Q. But not for making real money, no.

A. Not for making real money, no.

Q. It would not be suited to make real money of the United States?

A. No, because they specifically say that they have to have one certain kind of paper.

Q. And it has to have silk threads in it?

A. That is right.

Q. And Government's Exhibit 3 does not have the silk threads in it, so it isn't suited to make Government money, is it?

A. No. Very clearly that should be understood.

Cross-Examination by Mr. Pfister.

Exhibit 28 felt like it was heavier paper than Exhibit No. 3. Now, so far as the similarity is concerned, all of these papers are similar. As to whether Government's Exhibit 3 is similar to Government's Exhibit 28, if, by "similar" you

mean pretty near like it, I can say that about all of it. It is all similar. I will say that Government's Exhibit No. 3 is similar to Exhibit No. 28.

The Defendants' Exhibit 1-A and the Government's Exhibit No. 3 are quite similar. The feel of the other exhibits of the Defendants' does not feel similar. So far as the color of the paper is concerned they are all similar.

131 I see some markings on Government's Exhibit No. 3 but not clear enough that I can tell the color. They are sort of like a blue and red end, of course, I see a lot of very fine printing, here, of some kind, or something or other. I don't believe I find any such marking on any of the Defendants' Exhibits which have been exhibited to me.

BURNEY R. PARAMORE, a witness called on behalf of the defendants. being first duly sworn, testified as follows:

Direct Examination by Mr. Jeffrey.

My name is Burney R. Paramore. I have charge of the paper stock of the Burford Printing Company. I have been there six and one-half years during which time I have become familiar with the different qualities and types of bond typewriter paper that is sold on the market generally, as much as possible.

Defendants' Exhibit No. 1 is water marked "Eaton's Eminence Bond". It is made by the Eaton Paper Company of Pittsfield Massachusetts. They box it and sell it to stationers who, in turn, retail it. In 1935 it retailed for a dollar ninety a ream of eight and a half by eleven, on a twenty pound basis. A ream is five hundred sheets and legal cap is eight and a half by thirteen. That is about a medium price for a good quality of typewriter paper. Exhibits known as, 9-A and 9-B are some samples of Eaton's Eminence Bond.

Defendants' Exhibits 1, 9, 9-A, and 9-B are such paper as can be bought anywhere generally throughout the United States, at any bookstore or printing shop which handles Eaton's line. Defendants' Exhibit 8 is called Horder's

132 All Rag Parchment.

Government's Exhibit 3 can be readily determined as a piece of Rag Bond. It is very similar to Eaton's Eminence Bond. As far as I can tell from an examination, Government's Exhibit 3 is the type of Rag Bond paper that is on sale

generally and can be bought at any book store, with the exception of the marks on it. The red and blue marks I have reference to. It has been testified they are not silk threads, and with that exception, that paper is very similar to Eaton's Eminence Bond.

Comparing Government's Exhibit 28, Eaton's Eminence Bond which is Defendants' Exhibit 1, and Government's Exhibit 3, Government's Exhibit 3 is more similar to Defendants' Exhibit 1-A than it is to Government's Exhibit 28.

Cross-Examination by Mr. Pfister.

Q. What distinction is there between Government's Exhibit 3 and Defendant's Exhibit 9, that you have there in your book?

A. It is altogether a different texture of paper than the Defendants' Exhibit 1-A or 9-A, B or C—9 or 9-A or B, rather.

Q. You mean by that the Government's Exhibit 3 is not similar to the samples?

A. Insofar as texture is concerned, in my mind, it is not, no. That is, the formation of the fibers in this paper is not the same as the formation of the fibers in this paper (indicating).

Q. I can't see what you are holding.

A. This is Government's Exhibit 28 (indicating).

Q. I am not sure, now, that we are talking about the same exhibits. Referring to Government's Exhibit 3, which you hold in your hand, and to the Defendants' Exhibits 1, 9, 9-A and 9-B, tell to the jury whether or not those exhibits are similar.

A. As far as formation of the fibers are concerned, yes.

Q. And whether or not the Government's Exhibit No. 3 and the Government's Exhibit No. 28 are similar.

A. Not insofar as the formation of the paper is concerned, no.

They are both probably composed of pretty nearly the same material. I wouldn't say the markings are similar. They both bear markings. Neither of the Defendants' Exhibits 1, 9, 9-A and 9-B bear markings.

GEORGE W. HARGITT, a witness called on behalf of the Defendants', being first duly sworn, testified as follows:

Direct Examination by Mr. Jeffrey.

My name is George W. Hargitt. I am sales manager for C. P. Lesh Paper Company. I have been there thirty-five years. It is a big paper company here in Indianapolis. During that time I have come in contact with quite a few different papers. Defendants' Exhibit 1 is a piece of Eaton's Eminence Bond. Defendant's Exhibit 1-A is Horders Rag Parchment. Horders is the retail division of a big wholesale stationery house in Chicago.

Defendants' Exhibits 1 and 1-A are both such paper as is sold generally throughout the United States for typewriter paper. Any one can buy it. I cannot tell by looking at Government's Exhibit 3, what that is. For color it nearest matches Government Exhibit 28. For quality it nearer matches the other two sheets, Defendants' Exhibits 1 and
134 1-A. That question of color can be easily accounted for by too much sunlight. Light can necessarily cause a variation in white color.

Q. Are you prepared to say at this time whether or not, in your opinion, Government's Exhibit 3 is just an ordinary piece of typewriter paper, similar to the Defendants' Exhibits 1 and 1A?

Mr. Caughran: If the Court please, he has already said he couldn't identify Government's Exhibit 3. He said he didn't know what it was.

Mr. Jeffrey: I am just asking what his opinion is, whether, in his opinion, it is a piece of ordinary typewriter paper, similar to Defendants' Exhibits 1 and 1-A.

The Witness: I think it is.

The Court: Of course, on the question of similarity, he can take into consideration everything that is on there. We have got to take it just as we find it, you know. It might be a different grade—that is what makes the similarity if there is a similarity—as well as the weight and color. You have got to take them as the exhibit shows them on the similarity.

Mr. Jeffrey: Now, did you answer that last question, Mr. Witness?

The Witness: I am going to ask that the question be read.

(The Reporter read the preceding question as follows:

"Are you prepared to say at this time whether or not, in your opinion, Government's Exhibit 3 is just an ordinary piece of typewriter paper, similar to the Defendants' Exhibits 1 and 1-A?")

A. I would say so, yes, sir.

135 *Cross-Examination by Mr. Pfister.*

Government's Exhibits 3 and 28 are both white. They are not the same shade of white. The Government paper is harder. In my judgment, it has more sizing in it. What we mean by sizing, I mean glue, which all paper has to have before you can write on it, and I am sure that I could pick the two papers out any place, but that probably isn't what the average man could do. They are practically the same weight and they are both white. They are both rag content papers. The percent of the rag I do not know. I can see more of those so-called marks in this larger piece that is 28 than I can in the other. My eyes are not as young as they were. Under a magnifying glass I can see some marks on this No. 3, but not so many of them and they are not so distinct as 28.

JAMES B. NEWCOMB, a witness called on behalf of the Defendants, being first duly sworn, testified as follows:

Direct Examination by Mr. Jeffrey.

My name is James B. Newcomb. I live in Indianapolis and I am Vice President of the Crescent Paper Company. I have been with it twenty years and during that time have come to know paper very familiarly. My company and the Lesh Paper Company are the two big paper companies here.

Defendants' Exhibits 1 and 1-A are Horders Rag Parchment and Eaton's Eminence Bond. After comparing them with Government's Exhibit 3, I think Government's Exhibit 3 is more similar to Defendants' Exhibits 1 and 1-A then to Government's Exhibit 28. The formation seems to be more similar. Exhibits 1 and 1-A are just ordinary typewriter

136 paper, a good quality such as is sold generally throughout the United States to anyone who wants it.

I would say Government's Exhibit 3 can be just a good quality of typewriter paper, similar to Exhibits 1 and 1-A, and which is sold throughout the United States to anyone who

wishes to buy it. It is hard to identify without a mark such as the other sheets have, but it is a sheet of rag content paper and no doubt could be used for that purpose very readily.

Cross-Examination by Mr. Pfister.

As to any similarities between Governments Exhibits 3 and 28, the way I see it, the Government formation, that is Exhibit 28, is a little wilder than that of Exhibit 3 and, then, too, there is the difference there of the threads in Exhibit 28. I am a great deal like Mr. Hargitt I can't distinguish the markings on Number 3. I can't distinguish the marks on it. There are some marks there. I don't know whether it is soil or what. I can't distinguish whether there is a color to it or not.

And the Defendants Here Rested.

And the United States Here Rested.

Indianapolis, Indiana,
Friday, November 13, 1936,
Nine-Thirty O'Clock A. M.

The Court met pursuant to adjournment and the trial was resumed as follows:

The Court: You may proceed.

137 Mr. Jeffrey: If the Court please, with the consent of the United States Attorney, may the record show that, prior to the close of the defendants' case, the defendants, and each of them, offer in evidence DEFENDANTS' EXHIBITS 1, 1-A, 2, 3, 4, 5, 7, 8, 9, 9-A, and 9-B?

May they be shown in evidence?

Mr. Caughran: Yes sir.

The Court: Yes.

The said DEFENDANTS' EXHIBITS NOS. 1, 1-A, 2, 3. 4, 5, 7, 8, 9, 9-A, and 9-B, so offered, were admitted and read in evidence.

The Court: Now, as to this motion for a directed verdict, that was filed yesterday evening on the part of the defendants my thought is, gentlemen, that, so far as the first count of this indictment, which charges these defendants with violating that section of the statute pertaining to the making of impressions, the statute means that they should make such an impression as could be used in the making of counter-

feit money. I think the evidence fails to show that the impressions that were made by these defendants are such impressions as could be used for that purpose. It is more of a transfer of the ink from one paper to another and could not be used for the making of money to pass as genuine money.

Therefore, under that situation, it becomes my duty, at this time, to direct that you return a verdict of not guilty, so far as the first count is concerned. I wonder if this first gentleman, Mr. Wheeling, will sign this form of verdict on behalf of the jury: "We, the jury, find the defendants Ralph Raynor and Chett Fowler not guilty as to Count I." That is only the first count. Will you just step up and sign that, please?

138 (The juror signed said verdict as requested.)

The Court: I will show the motion sustained as to Count I and overruled, with an exception, as to Count II.

I want to caution you, gentlemen, at this time, that the action of the Court in this regard should not influence you in any way in arriving at your verdict as to Count II, which is having in their possession paper similar to that used by the United States Government and which may be used for the purpose of making money. That is the count that is left in the case, Count II, and, as I say, I want to caution you not to permit the action of the Court on Count I to influence you in any way in arriving at your verdict as to Count II.

I think that is clear, now, is it not?

Mr. Caughran: I think it is, your Honor.

The Court: It will not be necessary, I would say, to take a great deal of time in argument of the case.

(Arguments to the jury were presented by counsel for the respective parties.)

139 THE COURT'S INSTRUCTIONS TO THE JURY.

The Court: Gentlemen, the prosecution in this case was begun on the return of an indictment by the Federal Grand Jury on October 24 of this year.

The indictment is in two counts, which I explained to you at the time you were accepted as jurors in the case. You were directed to return a verdict for the defendants as to

Count I, the Court, at that time, explaining to you the reason for giving that direction, and I caution you again, at this time, that the action of the Court, with reference to Count I, should not be considered by you in determining the guilt or innocence of these defendants on the charge contained in Count II of the indictment.

So far as the law is concerned, you gentlemen should accept that as the Court gives it to you, but keep in mind that you are the sole judges of the facts and the weight and the credit that you are to give to the testimony of any of the witnesses that have appeared here before you.

The indictment, as it stands now,—and I am speaking, when I use the term "indictment," of Count II—charges that these defendants, on or about the 9th day of October of this year, after the Secretary of the Treasury of the United States had adopted a distinctive paper for the obligations and other securities of the United States, had in their possession, in Rooms 607 and 1015 Severin Hotel, in the City of Indianapolis, similar paper which was adapted to the making of such obligations and other securities, and that this paper was in their possession without authority of the Secretary of the Treasury or of any other officer of the United States.

140 Now, to this indictment, gentlemen, the defendants in this case have each been arraigned in open court and have entered their pleas of not guilty and, upon the issues thus joined, the burden is upon the Government to prove their guilt beyond a reasonable doubt before you can convict them.

So far as the return of the indictment is concerned, I say to you, now, that you should not consider that as any evidence in the case; that is to say, when one is to be prosecuted for the commission of an offense against the Government, the criminal procedure provides that there must first be returned an indictment. That is simply the preferring of the charge against the defendants and, when that charge has once been preferred, as it has in this case, by the return of an indictment, then the burden is upon the Government to prove the material allegations contained in the indictment—that is, that the defendants are guilty as charged in the indictment—beyond a reasonable doubt before you can convict them. That is true because, when one is charged with the commission of a crime, he is presumed to be innocent and that presumption follows him throughout the trial, step by

step, until such time, if that time arrives in the trial of a case, as he is proven guilty beyond any reasonable doubt.

You hear lawyers sometimes speak a great deal about the term "reasonable doubt" to such an extent that you may feel that there is something mysterious about that term, something that you cannot understand. Now, that is not true at all. "Reasonable doubt" does not mean much more
141 than the term itself would indicate to a person of ordinary intelligence. When you are attempting to find out the truth about something of which you do not have personal knowledge, something that you did not see yourself, you cannot be absolutely certain about it. The criminal law does not require that you be absolutely certain about guilt of the defendants, but you must be certain to the extent known as removing from your mind all reasonable doubt as to their guilt. Therefore, if, after hearing all of the evidence in this case, you have a doubt, you have a misgiving as to the guilt of these defendants to such an extent that you would hesitate to act in a matter where you were required to act or not, in a matter where some of your friends or loved ones might be concerned, then you can say that there is a reasonable doubt as to the guilt of the defendants and they should be acquitted. If, on the other hand, after hearing all the evidence and considering all the facts and circumstances presented in the case, you have an abiding faith in the guilt of these defendants to such an extent that you would not hesitate to act in a matter where you were required to act or not, in a matter where you might, or some of your friends might be concerned, then you can say that all reasonable doubt has been removed from your minds and they should be convicted.

I said to you a moment ago that you are the sole judges of the facts and the weight and the credit that you are to give to the testimony of the witnesses in this case. I cannot lay down any rule for you to follow in determining whom you are going to believe and whom you are not going to believe or what the facts are. You are all business men. You are men of affairs in your own communities or you would
142 not be here on this jury. You have had experience, in your every day life, in determining the facts in matters of which you did not have personal knowledge, in determining the weight and credit that you are going to give to statements of some individual with whom you are in contact, and the more experience you have had, gentlemen, in your

every day life, in such matters, the better you are enabled to sit in a jury box, in a Court of Justice, and look into the faces of the witnesses and determine the weight and credit you are going to give to the testimony of these witnesses, and who is testifying truthfully and the ones who may be testifying falsely.

Of course, you will take into consideration, in determining the weight and credit of the testimony of any of the witnesses, the interest they may have in the outcome of the trial, the intelligence of such witnesses, the opportunity that they may have had to determine the facts about which they testify, and such other facts as will assist you in determining whom you are going to believe and whom you are not going to believe and the weight and credit that you are going to give to the testimony of any witness or witnesses.

Now, the defendants in this case, gentlemen, did not testify in their own behalf. They had a right, under the law, to testify, or not, as they saw fit, but they did not testify. You should not consider that fact in determining their guilt or innocence because, under the law, as I say, they had a right to testify or not, as they saw fit, and the fact that they saw fit not to testify should not be considered by you in determining their guilt or innocence.

143 Now, we come to the statute which these defendants are charged by the Government with having violated.

In order to be convicted in a court of the United States, the defendants must be convicted of the violation of some statute of the United States. These men are not being charged with operating a confidence game. They are violating a statute of the United States, and that statute says that, "Whoever shall have or retain in his control or possession, after a distinctive paper has been adopted by the Secretary of the Treasury for the obligations and other securities of the United States, any similar paper adapted to the making of any such obligation or other security, except under the authority of the Secretary of the Treasury or some other proper officer of the United States," shall be guilty of an offense and be punished as prescribed in that section of the statute.

Now, let us analyze that statute just a moment, gentlemen, to see what it means. I think, after you have examined that statute carefully, you will find that your duties are limited to the determination of one or two questions. First, the indictment charges that the Secretary of the Treasury of the

United States has adopted certain distinctive paper for the purpose of making its obligations, its securities. Now, if you believe the testimony, all of the evidence in this case, undisputed, you will find that the Government has adopted a distinctive paper for that purpose. Therefore, under the evidence in this case, you would be justified in starting with the fact that that provision of the statute has been met.

You will then pass to the question of whether or not these defendants had in their possession paper, first, which was
144 similar to that which was adopted by the Secretary of the Treasury of the United States for making these obligations; second, if they had that paper in their possession, then the next question is whether or not that paper was adapted to the making of such obligations. Therefore, I think the evidence shows, in this case, undisputed, that these defendants had in their possession Exhibit No. 3, which has been introduced in evidence and which is the paper which the Government says is similar to that adopted by the Secretary of the Treasury, and that that paper, the Government says, is adapted to use in making such securities.

The fact that there was just one paper introduced in evidence in this case, gentlemen, should not influence you in arriving at your verdict because the statute does not say that the person must have in his possession a ream of paper or any certain amount of paper, but it says that if he has in his possession paper which is similar to that used by the United States, adapted to the use prescribed, then he is guilty as charged in the second count, of this indictment.

The question, then, of course, for you to determine is, first, whether or not Exhibit 3 was paper similar to that which had been adopted by the Secretary of the Treasury; second, if, so, whether it is adapted to the use of making obligations of the United States. The question is very simple. First, determine whether or not the paper, Exhibit 3, is similar and, if so, second, whether or not it is adapted to the use of making such obligations. If you answer both of these questions in the affirmative, then these defendants are guilty as charged in the indictment. On the other hand, if you answer either of them in the negative,—that is, if it is not
145 similar, or if similar, it is not adapted—then, of course, neither of them has violated this section of the statute of the United States.

The law does not say, gentlemen, that this paper, which they had in their possession, must be the same identical paper

as that which the Government has adopted for the use. It says it shall be similar to that which is adopted.

You saw these exhibits. You saw Exhibit 28, which is, under the evidence in this case, a piece of the paper which has been adopted by the Secretary of the Treasury of the United States. That evidence is undisputed. Accepting that as true, then it is for you to say whether or not, under the evidence in this case, Exhibit No. 3, which is the paper that the Government charges is similar and is adapted to the use for making money, is similar and so adapted and, if so, then, of course, you have one duty to perform, and that is to find these defendants guilty.

The statute does not say that this paper, in order to be similar, necessarily has to contain threads in it. It might be similar and have markings on it which would lead one to believe that it is the genuine paper as adopted by the Secretary of the Treasury.

You heard all of the evidence, gentlemen. It is not necessary for me to comment upon it any further. Of course, you will weigh that evidence. You heard the witnesses testify. It is for you to say what weight and credit you are going to give to their testimony, and, if you believe that these men violated this statute of the United States, it is your duty to convict them, and, in determining that question, take into consideration all of the evidence in this case bearing upon the question of whether or not they had in their possession
146 paper which was similar to that adopted by the Secretary of the Treasury and, if so, whether or not it is adapted to the use of making securities or Government certificates in violation of the law.

These men are not charged with counterfeiting; that is, making counterfeit money. They are charged, as I have said before, with having in their possession this paper.

"Adapted," as defined, means suitable, fit, correspond. Now, you should have no difficulty in determining the question whether or not this paper, Exhibit 3, is similar to the genuine paper. This definition of the term "adapted" does not mean that it is paper that the Government will have in its possession for making money, but the question is whether or not it is similar paper and is adapted to the making of money to pass in circulation.

Now, you are charged, gentlemen, with one responsibility in this case. It did not take a great while to try it. It is,

however, an important case. It is important to the Government of the United States. It is important to these defendants. Your only duty is to determine whether or not these defendants, are guilty as charged in the indictment. One of the defendants may be guilty and the other not. They both may be guilty or they both may be not guilty. That is a question for you to determine and you must determine that, gentlemen, upon the evidence, without any prejudice either for or against these defendants, for or against the Government, but, determine this question solely, squarely on the evidence that has been adduced in this case and, when you have arrived at your verdict, forms of which will be furnished you, have the foreman, whom you shall select when you
147 go to your jury room, sign that verdict and report to the Bailiff, in whose charge you will be, and you will be brought into court for the purpose of publishing that verdict.

Any exceptions?

Mr. Caughran: No exceptions.

Mr. Jeffrey: Yes, your Honor, I have one or two.

The defendants, and each of them, wish to object to that portion of the Court's instruction wherein it told the jury that the undisputed evidence shows the defendants had in their possession Exhibit 3 and that it was similar to and adapted to making United States obligations.

The Court: I did not say that it was similar to or adapted to.

Mr. Jeffrey: Well, perhaps I misunderstood the Court, but that is the way I thought that the instruction read.

The Court: If I did so state, I did not intend to. I said, "The undisputed evidence was"—and you will agree with me —"that they had this paper in their possession."

Mr. Jeffrey: That is right. Then I think the instruction continued, and I agree that the Court did not intend to say it,—

The Court: Well, strike it out, if I said that: that it was undisputed that this was similar paper and adapted to the use of the Government in making these certificates, you will disregard that statement. I did not intend to say it.

Mr. Jeffrey: I know it was inadvertent, but that is the way I think the Court said it.

Now, the defendants, and each of them, wish to object to that portion of the Court's instruction wherein it said that the

law does not say the paper must be the same identical
148 paper as has been adopted, it must be similar, for the reason that, under our construction of the statute, we think that is not correct and that it must be exactly like the paper.

The Court: All right. You may have an exception.

Mr. Jeffrey: All right.

The defendants object, and each of them object, to that portion of the Court's instruction wherein it said that the statute does not say that, in order to be similar, the paper must have threads in it, that the paper might be similar and only have markings such as to lead one to believe it was paper that had been adopted by the Secretary of the Treasury.

The Court: What is your objection to that?

Mr. Jeffrey: The objection is to the construction placed by the Court upon the meaning of the word "similar," that it might be similar and only have markings such as would lead one to believe that it was proper and that it had been adopted by the Secretary of the Treasury.

The Court: All right. You may have an exception.

Mr. Jeffrey: An exception to that. All right.

The Court: Is that all?

Mr. Jeffrey: That is all of the objections. Now, I do have one or two instructions I would like to ask the Court to give.

The defendants, and each of them, request the Court to instruct the jury that criminal statutes must be construed strictly against the Government and favorably as to the liberty of the citizen.

The Court: That is elementary.

Mr. Jeffrey: I think the jury is entitled to know that.

The Court: That is elementary.

Mr. Jeffrey: That is elementary to us, but I doubt if
149 it is to the jury.

The Court: It may be given if the defendants' attorney insists upon it. That is the law, gentlemen, and you should accept it as an instruction in the case.

Mr. Jeffrey: The defendants, and each of them, respectfully request the Court to instruct the jury that the statute does not intend to include all the various kinds of paper, suitable for use as typewriter paper, in order to make possession thereof unlawful, unless it is like the distinctive Government paper and suitable to be used for the purpose for which the Government paper is used.

The Court: That is the law, gentlemen. You may accept it. I think I have covered all of that. I think it is hardly necessary to go over these and just give your words, when we have given them.

Mr. Jeffrey: I am trying to exclude any that you have given. Some of them I think you have excluded.

Here is one I think the Court did not touch on.

The defendants, and each of them, respectfully request the Court to instruct the jury that the fact that either of the defendants may have, as argued by the United States Attorney, told someone that this was genuine paper, does not make it so unless, in fact, it was genuine paper.

The Court: Let that be given as an instruction of the Court.

Mr. Jeffrey: And one other, and that is all, if your Honor please.

The defendants, and each of them, respectfully request the Court to instruct the jury that the paper must be judged
150 as it is, and the fact that it might or might not be taken to Washington and put through Government presses and then passed as money is not sufficient to say that it is now, of was, adapted to the making of Government obligations or securities.

The Court: You may accept that, gentlemen, as the instruction of the Court.

Anything else?

Mr. Jeffrey: That is all.

The Court: Swear the Bailiff.

(Whereupon, The Bailiff was Sworn and the Jury Retired to Deliberate Upon its Verdict.)

151 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—6664) * *

CERTIFICATE OF JUDGE.

The foregoing Bill of Exceptions duly proposed by defendants Ralph Raynor and Chett Fowler, and each of them, and duly agreed upon by the respective parties hereto, having been duly presented to the Court within the time allowed by law and by the rules and orders of this Court, duly and regularly made in their behalf, is hereby settled, allowed, signed

and authenticated, as in the proper form and as conforming to the truth and is the true Bill of Exceptions herein, being a true transcript of all the evidence, offers of counsel, objections thereto, rulings of the Court thereon and the Exceptions thereto, with the Charge of the Court and the Exceptions thereto, and is hereby made a part of the record in this case.

It is further ordered that the exhibits of the Government numbered 3 and of the Defendants' numbered 1, 1-A, 2, 3, 4, 5, 7, 8, 9, 9-A, and 9-B, introduced in evidence in the trial of the above entitled cause and now in custody of the Clerk of this Court, shall be transmitted to the Circuit Court of Appeals for the Seventh Circuit, at Chicago, and shall be
152 deemed to be included as a part of the foregoing Bill of Exceptions, with the same effect and in all respects as if incorporated in said Bill of Exceptions.

Dated at Indianapolis, Indiana this 28th day of December, 1936.

Robert C. Baltzell,
United States District Judge.

50 And afterwards to wit: at the November Term of said Court on the 28th day of December, 1936, before the Honorable Robert C. Baltzell, Judge of said Court, the following further proceedings were had herein to wit: Filed Dec. 28, 1936.

Come now the defendants, by their attorneys, and file motion to transmit original exhibits to the Circuit Court of Appeals, which motion is as follows:

51 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—6664) * *

MOTION TO TRANSMIT ORIGINAL EXHIBITS TO THE CIRCUIT COURT OF APPEALS.

The defendants, Ralph Raynor and Chett Fowler, respectfully represent to the Court that there were a number of exhibits introduced in evidence, and that it is impractical to include photographs or copies of said exhibits in the transcript of the evidence, for the reason that said exhibits are certain pieces of paper, and that the Circuit Court of Appeals should have before it, for its consideration, the original pieces of paper constituting said exhibits.

Said defendants, therefore, move the Court for an order directing the Clerk of this Court to send to the Clerk of the United States Circuit Court of Appeals, for the Seventh Circuit, at Chicago, Government's Exhibit No. 3, and Defendants' Exhibits Nos. 1, 1A, 2, 3, 4, 5, 7, 8, 9, 9-A, and 9-B, as original evidence or exhibits in this cause.

George R. Jeffrey,
Wm. E. Risley,
Attorneys for Defendants, Ralph Raynor and Chett Fowler.

21 And afterwards to wit: at the November Term of said Court on the 19th day of November, 1936, before the Honorable Robert C. Baltzell, Judge of said Court, the following further proceedings were had herein to wit: Filed Nov. 19, 1936.

Comes now Val Nolan, Esq., Attorney for the United States, and comes also the defendant, Ralph Raynor, in his own proper person, and by his attorney, and files notice of appeal, which notice is as follows:

22 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—6664) * *

NOTICE OF APPEAL.

Name and address of appellant:
Ralph Raynor, 4727 Greenwood Avenue, Chicago.

Name and address of appellant's attorney:
George R. Jeffrey, 207 Hume Mansur Building, Indianapolis, Indiana.

Offense:
Violating the provisions of 18 U. S. C. A. 264 by possessing paper similar to a distinctive paper adopted by the Secretary of the Treasury for making Government obligations, without authority of the Secretary of the Treasury.

Date of Judgment:
November 16, 1936.

Brief description of judgment or sentence:
Ralph Raynor (4) years in a Federal penitentiary.

23 Name of prison where now confined, if not on bail:
Defendant released on bail.

I, the above-named Appellant, hereby appeal to the United States Circuit Court of Appeals for the Seventh Circuit from the judgment above-mentioned on the grounds set forth below.

I.

That the verdict of the jury is contrary to law.

II.

That the verdict of the jury is contrary to the evidence.

III.

That there was no sufficient competent evidence to support the verdict as to the defendants, or either of them.

IV.

The evidence adduced does not prove nor tend to prove the allegations in count two of the Indictment, and fails to show that either defendant had in his possession any paper as described in this count of the Indictment.

V.

There is a fatal variance between the proof, and the allegations contained in the second count of the indictment.

24 VI.

There was no evidence to prove that part of the allegations of the second count of the Indictment which reads as follows, to-wit; "without the authority of the Secretary of the Treasury or any other proper officer of the United States."

VII.

The evidence adduced does not prove nor tend to prove the allegations in count two (2) of the Indictment, and fails to show that either defendant had any paper in his possession without the authority of the Secretary of the Treasury or any other proper officer of the United States.

VIII.

The undisputed evidence shows that the paper possessed by each of these defendants was of the kind and quality sold generally by stores to the trade and that these defendants and the public generally were entitled to possess this paper without authority of the Secretary of the Treasury.

IX.

The Court erred in not granting the separate and several motions of each of the defendants for a peremptory instruction to the judy to render a verdict of not Guilty at the close of the whole case.

X.

The Court erred in permitting the Government to introduce in evidence over the objections of each of the defendants, Government's exhibit number 3.

XI.

The Court erred in refusing to permit the witness
25 Galligher to answer questions propounded on cross examination as to whether there was any effort on the part of either of the defendants to counterfeit, or whether it was ever their intention to counterfeit, and in sustaining the objections of the Government to such questions asked upon cross examination.

XII.

The Court erred in refusing to permit either John O. Burton, a Government witness, or John Keller a witness for the defendants, to make a test of exhibit 3 by using an eraser in an effort to determine whether certain marks referred to could be removed.

XIII.

The Court erred in admitting irrelevant, incompetent, prejudicial and immaterial testimony offered by and on behalf of the Government, particularly with reference to the exhibits offered in behalf of the Government at the trial of this case, wherein and whereby certain papers, containing so called impressions, vessels, and bottles containing some substance, wood press, glass, and other paraphernalia where admitted in evidence and exhibited to the jury over the objections and exceptions of each of these defendants at the time, and which were of such nature as to impress the jury with the belief that these defendants might have been counterfeiters, and were of such nature as to unduly prejudice the

jury against the defendants to the extent that neither of them could have a fair trial or impartial verdict in so far as the jury was concerned.

XIV.

That the Court erred in charging the jury as follows,
26 "the law does not say the paper must be the same identical paper that has been adopted—it must be similar", to which portion of the Court's charge each of the defendants then and there objected and excepted.

XV.

That the Court erred in charging the jury as follows, "the statute does not say that in order to be similar the paper must have threads in it—it might be similar and only have markings such as to lead one to believe it was paper that had been adopted by the Secretary of the Treasury", to which portion of the Court's charge each of the defendants then and there objected and excepted.

XVI.

The Court erred in over-ruling the defendants' objection to the following question, asked by the Government of John O. Burton while he was testifying as a witness for the Government: Q. "From your experience in the Treasury Department, analyzing paper and so on, state whether or not, in your opinion, if the Government exhibit No. 3 were taken to the Bureau of Printing and Engraving in Washington and there printed into a $20.00 Treasury note, that paper, exhibit 3, is such a paper that would pass currency in the general trade of the country." to which ruling of the Court the defendants at the time excepted, and in permitting the witness to make the answer, "in my opinion, it is."

XVII.

The Court erred in sustaining the objection of the Government to the following question asked by the defendants in cross examination of John O. Burton while he was testifying as a witness for the Government: Q. "and if those

marks on Government's exhibit 3 are red and blue pencil
27 marks and not silk threads, then the Government's exhibit 3 is not adaptable for the use or for the making of Government obligations, under the rules adopted by the Secretary of the Treasurer for that distinctive paper? Is that true?'' and in refusing to permit said witness to answer said question, to which ruling of the Court the defendants at that time excepted.

XVIII.

The Court erred in sustaining the objection of the Government to the following question asked by the defendants in cross examination of John O. Burton while he was testifying as a witness for the Government: Q. ''Mr. Witness will you please take Government's exhibit 3—now, don't do this yet—it is just a question. Will you please take Government's exhibit 3 and take an eraser and endeavor to erase one of those red and blue markings and see if you can erase it from the surface of that paper?'' and in refusing to permit said witness to answer said question, to which rulings of the Court the defendants at the time excepted.

(Signed) Ralph Raynor.

Dated: November 19, 1936.

Receipt of a copy of the above and foregoing notice of appeal is hereby acknowledged this 19th day of November, 1936.

Val Nolan,
United States Attorney.

ed Nov. 19, 936.

30 (Entry for November 19, 1936, continued).

And comes also the defendant, Chett Fowler, in his own proper person, and by his attorney, and files notice of appeal, which notice is as follows:

31 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—6664) * *

NOTICE OF APPEAL.

The name and address of the appellant is, Chett Fowler, 75th Street & Keystone Avenue, Indianapolis.

The name and address of the appellant's attorney is, William E. Reiley, 1502 Railway Exchange Building, Indianapolis, Indiana.

Offense—Having in his possession, after a distinctive paper had been adopted by the Secretary of the Treasury, similar paper, adapted to making obligations and securities of the United States.

The judgment was entered on the 16th day of November, 1936.

The judgment or sentence was two years in the Federal Prison at Atlanta, Georgia.

The appellant is now on bail.

I, the above-named Appellant, hereby appeal to the United States Circuit Court of Appeals for the Seventh Circuit from the judgment above-mentioned on the grounds set forth below.

Chett Fowler,
Appellant.

Dated November 19, 1936.

The grounds for appeal are:

1. That the said judgment is contrary to law.
2. That the said judgment is contrary to law and the evidence.
3. That the Court erred in overruling the motion for a new trial.

Received a copy of above, this 19th day of November, 1936.

Val Nolan,
U. S. District Attorney.

45 And afterwards to wit: at the November Term of said Court on the 21st day of December, 1936, before the Honorable Robert C. Baltzell, Judge of said Court, the following further proceedings were had herein to wit: Filed Dec. 21, 1936.

Come now the defendants, by their attorneys, and file assignment of errors, which is as follows:

46 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—6664) * *

ASSIGNMENT OF ERRORS.

The defendants Ralph Raynor and Chett Fowler, having appealed from the judgment of this Court to the United States Circuit Court of Appeals for the Seventh Circuit, and believing and alleging that in the record of the proceedings in the above entitled cause there is manifest error which occured upon the trial of said cause and upon which they rely for the prosecution of the appeal herein, assign as such error the following:

I.

That the verdict of the jury is contrary to law.

II.

That the verdict of the jury is contrary to the evidence.

III.

The evidence adduced does not prove nor tend to prove the allegations in count two of the Indictment, and fails to show that either defendant had in his possession any paper as described in this count of the Indictment.

IV.

There is a fatal variance between the proof, and the
47 allegations contained in the second count of the Indictment.

V.

There was no evidence to prove that part of the allegations of the second count of the Indictment which reads as follows, to-wit: "without the authority of the Secretary of the Treasury or any other proper officer of the United States."

VI.

The Court erred in not granting the separate and several motions of each of the defendants for peremptory instruction to the jury to render a verdict of not Guilty at the close of the whole case.

VII.

The Court erred in permitting the Government to introduce in evidence over the objections of each of the defendants, Government's Exhibits numbered 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 20, 21, 22, 24, 26, 27, to which ruling of the Court the Defendants at the time excepted.

VIII.

That the Court erred in charging the jury as follows, "the law does not say, gentlemen, that this paper, which they had in their possession, must be the same identical paper as that which the Government has adopted for the use. It says it shall be similar to that which is adopted", to which portion of the Court's charge each of the Defendants then and there objected and excepted.

48 IX.

That the Court erred in charging the jury as follows, "the statute does not say that this paper, in order to be similar, necessarily has to contain threads in it. It might be similar and have markings on it which would lead one to believe that it is the genuine paper as adopted by the Secretary of the Treasury," to which portion of the Court's charge each of the Defendants then and there objected and excepted.

X.

The Court erred in over-ruling the defendants' objection to the following question, asked by the Government of John O. Burton while he was testifying as a witness for the Government: Q. "From your experience in the Treasury Department, analyzing paper and so-on, state whether or not, in your opinion, if the Government Exhibit No. 3 were taken to the Bureau of Printing and Engraving in Washington and there printed into a $20.00 Treasury note, that paper, exhibit 3, is such paper that would pass currency in the general trade of the country." to which ruling of the Court the defendants at the time excepted, and in permitting the witness to make the answer, "in my opinion, it is."

XI.

The Court erred in sustaining the objection of the Government to the following question asked by the defendants in cross-examination of John O. Burton while he was testifying as a witness for the Government: Q. "and if those marks on Government's Exhibit 3 are red and blue pencil marks
49 and not silk threads, then the Government's Exhibit 3 is not adaptable for the use or for the making of Government obligations, under the rules adopted by the Secretary of the Treasury for that distinctive paper? Is that true?" and in refusing to permit said witness to answer said question, to which ruling of the Court the defendants at that time excepted.

XII.

The Court erred in sustaining the objection of the Government to the following question asked by the defendants in cross-examination of John O. Burton while he was testifying as a witness for the Government: Q. "Mr. Witness will you please take Government's Exhibit 3—now, don't do this yet—it is just a question. Will you please take Government's Exhibit 3 and take an eraser and endeavor to erase one of those red and blue markings and see if you can erase it from the surface of that paper?" and in refusing to permit said witness to answer said question, to which rulings of the Court the defendants at the time excepted.

XIII.

The Court erred in denying the separate and several motions of the defendants, Ralph Raynor and Chett Fowler for a new trial.

Wherefore, the defendants, Ralph Raynor and Chett Fowler, pray that the judgment herein, for the errors aforesaid in the record and proceedings herein, may be reversed and annuled, and altogether held for nothing.

George R. Jeffrey,
Wm. E. Reiley,
Attorneys for Defendants, Ralph Raynor and Chett Fowler.

ed Nov. 19, 936.

20 And afterwards to wit: at the November Term of said Court on the 17th day of November, 1936, before the Honorable Robert C. Baltzell, Judge of said Court, the following further proceedings were had herein to wit:

Comes now Val Nolan, Esq., Attorney for the United States, and come also the defendants, Ralph Raynor and Chett Fowler, each in his own proper person, and by his attorney, and it is ordered by the Court that the appeal bond of defendant, Ralph Raynor, be, and the same is, hereby fixed at $5000.00; and that the appeal bond of defendant, Chett Fowler, be, and the same is, hereby fixed at $2500.00.

28 (Entry for November 19, 1936, continued.)

And said defendant also files appeal bond in the sum of Five Thousand Dollars ($5000.00), with the United States Fidelity & Guaranty Company as surety thereon, which bond is approved by the Court and is as follows:

29 Know All Men By These Presents,

That Ralph Raynor, of the County of Cook, State of Illinois, as principal, and United States Fidelity and Guaranty Company, Baltimore, Maryland, the former of the County of Marion, State of Indiana, as sureties, are held and firmly bound unto the United States of America in the full and just sum of Five Thousand Dollars ($5,000.00), to be paid to the United States of America, to which payment well and

truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

—Sealed with our seals and dated this 19th day of November, in the year of our Lord one thousand nine hundred and thirty-six.

Whereas, lately on the sixteenth day of November, 1936, at the November Term of the District Court of the United States for the Southern District of Indiana, Indianapolis Division, in a cause pending in said Court between the United States of America, Plaintiff, and Ralph Raynor, Defendant, a judgment and sentence was rendered against said Ralph Raynor and the said Ralph Raynor has been granted an appeal from the District Court of the United States for the Southern District of Indiana, Indianapolis Division, to the United States Circuit Court of Appeals for the Seventh Circuit from the judgment and sentence in the aforesaid suit, and a citation directed to the United States of America, citing and admonishing the United States of America to be and appear in the United States Circuit Court of Appeals for the Seventh Circuit at the City of Chicago thirty days from and after the date thereof, which citation has been duly served.

Now the Condition of Said Obligation Is Such, that if the said Ralph Raynor shall appear in person in the United States Circuit Court of Appeals for the Seventh Circuit when said cause is reached for argument or when required by law or rule of said Court, and from day to day thereafter in said Court, until said cause shall be finally disposed of and shall abide by and obey the judgment and all orders made by the United States Circuit Court of Appeals for the Seventh Circuit, in said cause, and shall surrender himself in execution of the judgment and sentence aforesaid, as said Court may direct, and shall abide by and pay any fines and costs commanded by said judgment, in the event the said judgment and sentence against him shall be affirmed or the appeal shall be dismissed; and if he shall prosecute his appeal with effect and answer all costs and damages that may be adjudged or awarded against him if he shall fail to make good his plea; and if he shall appear for trial in the District Court of the United States for the Southern District of Indiana on such day or days as may be appointed for retrial by said District Court and from day to day and term to term thereafter and abide by and obey all orders of said Court in the event the said judgment and sentence against him shall be reversed by the United States Circuit Court of Appeals for the Seventh Cir-

cuit, then the above obligation to be void, otherwise to remain in full force, virtue, and effect.

(Seal) Ralph Raynor (Seal)
United States Fidelity & Guaranty Company, (Seal)
by Paul C. Smith,
Attorney in Fact. (Seal)

Approved: November 19, 1916.
Robert C. Baltzell,
United States District Judge,
Southern District of Indiana.

ed Nov. 19, 1936. 32 (Entry for November 19, 1936, Continued.)

And said defendant also files appeal bond in the sum of Twenty Five Hundred Dollars ($2500.00), with Mrs. Mable Bruce and Mrs. Emma Feier as sureties thereon, which bond is approved by the Court and is as follows:

33 Know All Men by These Presents,

That Chett Fowler, of the County of Marion, State of Indiana, as principal, and Mrs. Emma Feier and Mrs. Mable Bruce, of the County of Marion, State of Indiana, as sureties, are held and firmly bound unto the United States of America in the full and just sum of Twenty-Five Hundred Dollars ($2500.00), to be paid to the United States of America, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 19th day of November, in the year of our Lord one thousand nine hundred and thirty-six.

Whereas, lately on the sixteenth day of November, 1936, at the November Term of the District Court of the United States for the Southern District of Indiana, Indianapolis Division, in a cause pending in said Court between the United States of America, Plaintiff, and Chett Fowler, Defendant, a judgment and sentence was rendered against said Cheet Fowler and the said Chett Fowler has been granted an appeal from the District Court of the United States for the Southern District of Indiana, Indianapolis Division, to the United States Circuit Court of Appeals for the Seventh Circuit from the judgment and sentence in the aforesaid suit, and a citation

directed to the United States of America, citing and admonishing the United States of America to be and appear in the United States Circuit Court of Appeals for the Seventh Circuit at the City of Chicago thirty days from and after the date thereof, which citation has been duly served.

Now the Condition of Said Obligation Is Such, That if the said Chett Fowler shall appear in person in the United States Circuit Court of Appeals for the Seventh Circuit when said cause is reached for argument or when required by law or rule of said Court, and from day to day thereafter in said Court, until said cause shall be finally disposed of and shall abide by and obey the judgment and all orders made by the United States Circuit Court of Appeals for the Seventh Circuit, in said cause, and shall surrender himself in execution of the judgment and sentence aforesaid, as said Court may direct, and shall abide by and pay any fines and costs commanded by said judgment, in the event the said judgment and sentence against him shall be affirmed or the appeal shall be dismissed; and if he shall prosecute his appeal with effect and answer all costs and damages that may be adjudged or awarded against him if he shall fail to make good his plea; and if he shall appear for trial in the District Court of the United States for the Southern District of Indiana on such day or days as may be appointed for retrial by said District Court and from day to day and term to term thereafter and abide by and obey all orders of said Court in the event the said judgment and sentence against him shall be reversed by the United States Circuit Court of Appeals for the Seventh Circuit, then the above obligation to be void, otherwise to remain in full force, virtue, and effect.

Chett Fowler (Seal)
Mrs. Mable Bruce (Seal)
Mrs. Emma Feier (Seal)

Approved: November 19, 1936.
Robert C. Baltzell,
United States District Judge,
Southern District of Indiana.

34 United States of America
Southern District of Indiana } ss:

Mrs. Emma Feier of Indianapolis, Indiana, the surety on the within bond, being duly sworn on her oath, says that she is worth in her own name and right in unencumbered real

estate, situate in the District aforesaid, and over and above the entire amount of her indebtedness and legal exemption, the sum of Six Thousand Dollars ($6,000.00), which is the fair cash value of the said real estate.

Mrs. Emma Feier.

Subscribed and sworn to before me this 18th day of Nov., 1936.

(Seal) Alva H. Voris.

My commission expires April 13, 1939.

United States of America
Southern District of Indiana } ss:

Mrs. Mable Bruce of Indianapolis, Indiana, the surety on the within bond, being duly sworn on her oath, says that she is worth in her own name and right in unencumbered real estate, situate in the District aforesaid, and over and above the entire amount of her indebtedness and legal exemption, the sum of Six Thousand Dollars ($6,000.00), which is the fair cash value of the said real estate.

Mrs. Mable Bruce.

Subscribed and sworn to before me this 18th day of Nov., 1936.

(Seal) Alva H. Voris.

My commission expires April 13, 1939.

41 And afterwards to wit: at the November Term of said Court on the 14th day of December, 1936, before the Honorable Robert C. Baltzell, Judge of said Court, the following further proceedings were had herein to wit:

Come now the defendants Ralph Raynor and Chett Fowler by their counsel, and comes also the United States of America by the United States Attorney, and the defendants within the time allowed by law and by the rules of the United States Supreme Court and of the United States Circuit Court of Appeals for the Seventh Circuit, and within thirty days after the taking of the Appeal in this case, file their petition for an extension of time in which to file their Bill of Exceptions which is as follows, to-wit:

42 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—6664) * *

PETITION TO EXTEND TIME TO FILE BILL OF EXCEPTIONS.

Come now the defendants Ralph Raynor and Chett Fowler, and respectfully represent to the Court that they have been diligent in their efforts to prepare the Bill of Exceptions in this case and that the same is at this time prepared, but that they have not had an opportunity to check said Bill for typographical errors, or to present the same to the United States Attorney for his approval.

That the interest of justice requires an extension of time in order that the bill may be presented to the United States Attorney for his inspection, and for such additions as he may see fit to make, or to recommend.

Wherefore these defendants within the time allowed by law and by the rules of the United States Supreme Court, and of the United States Circuit Court of Appeals for the Seventh Circuit, respectfully petition the Court for an order extending time within which to settle and file their Bill of Exceptions herein, and within which to file their Assignment of Errors,

and within which the Clerk of this Court may file
43 the transcript of the record with the Clerk of the Circuit Court of Appeals for the Seventh Circuit, to and including the thirtieth day of December, 1936.

George R. Jeffrey,
Wm. E. Reiley,
Attorneys for Defendants Ralph Raynor and Chett Fowler.

44 (Entry for December 14, 1936, Continued.) Entered Dec. 14 1936.

And the Court having examined said petition, finds that the interest of justice requires that said petition should be granted.

It is, therefore, Ordered, that the time within which the defendants may settle and file their Bill of Exceptions, and the time within which they may file their Assignment of Errors, and the time within which the Clerk of this Court shall transmit the transcript of the record to the Clerk of the Circuit Court of Appeals for the Seventh Circuit, shall be, and the same is hereby extended to and including the thirtieth day of December, 1936.

Filed Dec. 7. 1936.

35 And afterwards to wit: at the November Term of said Court on the 7th day of December, 1936, before the Honorable Robert C. Baltzell, Judge of said Court, the following further proceedings were had herein to wit:

Come now the appellants, Ralph Raynor and Chett Fowler, by their counsel, and comes also the United States of America, appellee, by the United States Attorney, and said parties file their stipulation that the appeal herein may be presented to the Circuit Court of Appeals upon one transcript of the record, including one assignment of errors and one bill of exceptions, and that the same may be heard and determined jointly upon this appeal upon one record.

36 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—6664) * *

STIPULATION FOR JOINT RECORD.

Whereas the above-named appellants, Ralph Raynor and Chett Fowler, were Indicted jointly and tried jointly upon one record,

It is hereby stipulated and agreed by and between the above-named appellants, by their counsel, and the United States of America, appellee, by the United States Attorney within and for the Southern District of Indiana, that the above matter may be presented to the Circuit Court of Appeals upon one transcript of the record, to be prepared, presented and considered as the joint record of the filing defendants, including one assignment of errors, and one bill of exceptions, and that the same may be heard and determined jointly upon this appeal upon one record.

George R. Jeffrey,
Attorney for Ralph Raynor.
W. E. Reiley,
Attorney for Chett Fowler.
Val Nolan,
United States Attorney.

37 (Entry for December 7, 1936, Continued.)

And the Court having considered said stipulation, finds that it ought to be approved.

It is, therefore, Ordered, that the above matter be presented to the Circuit Court of Appeals upon one transcript of the record, to be prepared, presented and considered as the joint record of the filing defendants, including one assignment of errors, and one bill of exceptions, and that the same be heard and determined jointly upon this appeal upon one record.

And said defendants also file joint praecipe for record, which is as follows:

38 In the District Court of the United States.

* * (Caption—6664) * *

JOINT PRAECIPE FOR RECORD TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE SEVENTH CIRCUIT.

To the Clerk of the United States District Court for the Southern District of Indiana:

You will please prepare, certify and transmit a transcript of the record for the United States Circuit Court of Appeals for the Seventh Circuit, including the following items from the files and records of said Court, to be used on appeal from the judgment entered in the above entitled cause to the said Circuit Court of Appeals, to-wit:

1st. The Indictment in said cause.

2nd. The arraignment and plea of each of the defendants, Ralph Raynor and Chett Fowler.

3rd. The trial, the verdict and judgment as to each of the above-named defendants.

4th. The separate and several motions of each of the defendants, Ralph Raynor and Chett Fowler for instructions to the jury to return a verdict of "Not Guilty" as to each defendant, filed and presented at the close of all the evidence in the case, together with the ruling and order of the Court thereon.

39 5th. Instructions of the Court to the jury.

6th. The separate and several motions of each of the

defendants, Ralph Raynor and Chett Fowler, for a new trial, together with the ruling and the order of the Court thereon.

7th. The separate and several notices of each of the defendants, Ralph Raynor and Chett Fowler, of an appeal, and the joint assignment of errors, of the defendants Ralph Raynor and Chett Fowler.

8th. The appeal bond of each of the above-named defendants.

9th. The stipulation of the defendants, and the United States of America, for consolidation of cases for the purpose of preparing, and filing a joint transcript of the record, including a joint assignment of errors and a joint bill of exceptions, for appeal to and review by the Circuit Court of Appeals for the Seventh Circuit together with the order of Court thereon.

10th. The joint bill of exceptions of the above-named defendants.

11th. The joint petition for and the order enlarging the time within which the defendants shall procure to be settled and file with the clerk, the bill of exceptions herein.

12th. This Praecipe.

George R. Jeffrey,
Attorney for defendant Ralph Raynor.
W. E. Reiley,
Attorney for defendant Chett Fowler.

40 December 7, 1936.

Receipt is acknowledged of a copy of the attached Praecipe.

Val Nolan,
United States Attorney.
P.

153 United States of America
Southern District of Indiana } ss:
Indianapolis Division

I, Albert C. Sogemeier, Clerk of the United States District Court in and for the Southern District of Indiana, do hereby certify that the above and foregoing is a true and full transcript of the record and proceedings in the cause of United States *vs.* Ralph Raynor, Chett Fowler alias Chess Fowler, No. 6664 Cr., according to the praecipe filed December 7, 1936, now remaining among the records of said Court in my office.

I further certify that the original Bill of Exceptions has been incorporated into said transcript.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Indianapolis, this 28th day of December, 1936.

Albert C. Sogemeier,
Clerk, United States District Court,
Southern District of Indiana.

(Seal)

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

I, FREDERICK G. CAMPBELL, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 107, inclusive, contain a true copy of the printed record, printed under my supervision and filed on January 6, 1937, on which record the following entitled causes were heard and determined: No. 6096, Ralph Raynor vs. The United States of America; No. 6097, Chett Fowler vs. The United States of America; October Term, 1936, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 7th day of June, A. D. 1937.

[SEAL]

FREDERICK G. CAMPBELL,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.
By F. J. CARRICK,
Chief Deputy Clerk.

At a regular term of The United States Circuit Court of Appeals for the Seventh Circuit, begun and held in the United States Court House in the City of Chicago in said Seventh Circuit, on the sixth day of October of the October Term, in the year of our Lord One Thousand Nine Hundred and Thirty-six and of our Independence the One Hundred and Sixty-first.

6096

RALPH RAYNOR

vs.

THE UNITED STATES OF AMERICA

Appeal from the District Court of the United States for the Southern District of Indiana, Indianapolis Division

And on, to wit, the 23rd day of November, 1936, there was filed in the office of the Clerk of this court a notice of appeal and grounds of appeal, which said notice of appeal and grounds of appeal are not copied here as the same appear on Pages 83 to 87, inclusive, of the printed record in this cause certified herewith.

And on the same day, to wit, the 23rd day of November 1936, there was filed in the office of the Clerk of this court a Clerk's statement of docket entries forwarded under Rule IV, which said Clerk's statement of docket entries is in the words and figures following, to wit:

Form of Clerk's Statement of Docket Entries to be Forwarded Under Rule IV.

151002—37——1

Form No. 3

District Court of the United States, Southern District of Indiana, Indianapolis Division

No. 6664

UNITED STATES

vs.

RALPH RAYNOR

Indictment for violation of the provisions of 18 U. S. C. A. 264 by possessing paper similar to a distinctive paper adopted by the Secretary of the Treasury for making Government obligations, without authority of the Secretary of the Treasury. Indictment filed October 24, 1936.

Plea to Indictment: November 7, 1936. Defendant files demurrer to Count 1. Defendant arraigned and pleads not guilty to Count 2. November 12, 1936. Demurrer and motion to quash overruled. Defendant arraigned and pleads not guilty to Count 1.

Trial by Jury: November 12, 1936. At conclusion of Government's evidence the defendants file motion for directed verdict. Overruled and exception. Evidence concluded. Defendants file motion for directed verdict.

Verdict: November 13, 1936. Defendant's motion for directed verdict sustained as to Count 1 and overruled as to Count 2. Exception. Directed verdict of not guilty on Count 1. Jury returns verdict of guilty as to Count 2.

Judgments: Four years Penitentiary, November 16, 1936.

Notice of Appeal filed November 19, 1936.

November 19, 1936.

Attest:

[SEAL] ALBERT C. SOGEMEIER, *Clerk.*

(Endorsed:) Filed Nov. 23, 1936. Frederick G. Campbell, Clerk.

And afterwards, to wit, on the 29th day of December 1936, there was filed in the office of the Clerk of this court a certificate to exhibits, which said certificate is in the words and figures following, to wit:

Original Exhibits in the Case of—

6664 Cr.

UNITED STATES

vs.

RALPH RAYNOR ET AL.

I, Albert C. Sogemeier, Clerk U. S. District Court for the Southern District of Indiana, do hereby certify that this envelope contains the

original exhibits in the above case as follows: Government's Exhibit 3; Defendants' Exhibits 1, 1A, 2, 3, 4, 5, 7, 8, 9, 9–A, and 9–B, transmitted with the transcript on appeal in compliance with an order of Court entered December 28, 1936.

Witness my hand and the seal of said Court this 28th day of December 1936.

[SEAL] ALBERT C. SOGEMEIER, *Clerk.*

(Endorsed:) Filed Dec. 29, 1936. Frederick G. Campbell, Clerk.

And afterwards, to wit, on the 29th day of January 1937, the following further proceedings were had and entered of record, to wit:

United States Circuit Court of Appeals for the Seventh Circuit

Friday, January 29, 1937

Court met pursuant to adjournment before Hon. Evan A. Evans, Circuit Judge; Hon. Walter C. Lindley, District Judge; Hon. Charles G. Briggle, District Judge.

6096

RALPH RAYNOR

vs.

THE UNITED STATES OF AMERICA

Appeal from the District Court of the United States for the Southern District of Indiana, Indianapolis Division

Now this day come the parties by their counsel, and this cause comes on to be heard on the printed record and briefs of counsel, and on oral argument by Mr. John Elliott Byrne, counsel for appellant, and by Mr. Paul A. Pfister, counsel for appellee, and the Court having heard the same takes this matter under advisement.

And afterwards, to wit, on the 23rd day of March 1937, there was filed in the office of the Clerk of this court the opinion of the court, which said opinion is in the words and figures following, to wit:

March 23, 1937

EVANS, Circuit Judge, and LINDLEY and BRIGGLE, District Judges.

BRIGGLE, District Judge. The defendants were convicted in the District Court under the second count of an indictment charging that they "on or about the 9th day of October 1936, after a distinctive paper had been adopted by the Secretary of the Treasury of the United States for the obligations and other securities of the United States, did then and there unlawfully, wilfully, knowingly and feloniously have in their possession * * * similar paper adapted to the making of such obligations and other securities, without the authority of the Secretary of the Treasury or any other

proper officer of the Unied States." Defendants prosecute separate appeals, but as the same questions are involved in each they will be disposed of in one opinion.

The section of the statute under which defendants were convicted (Crim. Code Sec. 150, Title 18 U. S. C. A. Sec. 264) consists of one sentence, separated into seven distinct subdivisions by semi-colons. It is the last of these seven subdivisions with which we are here concerned, but for a better understanding the entire section is appended in the margin.[1] That portion here involved provides that "whoever shall have or retain in his control or possession, after a distinctive paper has been adopted by the Secretary of the Treasury for the obligations and other securities of the United States, any similar paper adapted to the making of any such obligation or other security, except under the authority of the Secretary of the Treasury or some other proper officer of the United States * * *."

The pertinent facts are without substantial dispute and are as follows: The Secretary of the Treasury of the United States adopted in 1928 a distinctive paper for the printing of government obligations and securities, which was a high grade rag bond paper with short, fine, red and blue silk fibers impregnated. The silk fibers are placed in the pulp and distributed throughout the paper at the time of manufacture and are visible to the eye after the paper is manufactured and after the currency or obligations are printed. This distinctive paper is manufactured for the government under a contract with a private concern upon an ordinary paper machine. As it comes from the machine it is put under government guard, cut to the size specified, put

[1] SEC. 264. (Criminal Code, sec. 150) Using plates to print notes without authority; distinctive paper. Whoever, having control, custody, or possession of any plate, stone, or other thing, or any part thereof, from which has been printed, or which may be prepared by direction of the Secretary of the Treasury for the purpose of printing, any obligation or other security of the United States, shall use such plate, stone, or other thing, or any part thereof, or knowingly suffer the same to be used for the purpose of printing any such or similar obligation or other security, or any part thereof, except as may be printed for the use of the United States by order of the proper officer thereof; or whoever by any way, art, or means shall make or execute, or cause or procure to be made or executed, or shall assist in making or executing any plate, stone, or other thing in the likeness of any plate designated for the printing of such obligation or other security; or whoever shall sell any such plate, stone, or other thing, or bring into the United States or any place subject to the jurisdiction thereof, from any foreign place, any such plate, stone, or other thing, except under the direction of the Secretary of the Treasury or other proper officer, or with any other intent, in either case, than that such plate, stone, or other thing be used for the printing of the obligations or other securities of the United States; or whoever shall have in his control, custody, or possession any plate, stone, or other thing in any manner made after or in the similitude of any plate, stone, or other thing, from which any such obligation or other security has been printed, with intent to use such plate, stone, or other thing, or to suffer the same to be used in forging or counterfeiting any such obligation or other security, or any part thereof; or whoever shall have in his possession or custody, except under authority from the Secretary of the Treasury or other proper officer, any obligation or other security made or executed, in whole or in part, after the similitude of any obligation or other security issued under the authority of the United States, with intent to sell or otherwise use the same; or whoever shall print, photograph, or in any other manner make or execute, or cause to be printed, photographed, made, or executed, or shall aid in printing, photographing, making, or executing any engraving, photograph, print, or impression in the likeness of any such obligation or other security, or any part thereof, or shall sell any such engraving, photograph, print, or impression, except to the United States, or shall bring into the United States or any place subject to the jurisdiction thereof, from any foreign place, any such engraving, photograph, print, or impression, except by direction of some proper officer of the United States; or whoever shall have or retain in his control or possession, after a distinctive paper has been adopted by the Secretary of the Treasury for the obligations and other securities of the United States, any similar paper adapted to the making of any such obligation or other security, except under the authority of the Secretary of the Treasury or some other proper officer of the United States, shall be fined not more than $5,000 or imprisoned not more than fifteen years, or both. (R. S. Sec. 5430; Mar. 4, 1909, c. 321, Sec. 150, 35 Stat. 1116.)

in sealed cases and delivered under guard to Bureau of Printing and Engraving of the Treasury Department.

The defendants were found in possession of a small piece of paper, introduced in evidence as Government's Exhibit 3 which was a high grade bond paper, cut the size of ordinary currency and approximately the same color, weight, thickness, and opacity as the "distinctive" government paper. It "rattled" very much the same on crushing, had small, irregular red and blue lines on the surface (apparently pencil marks) made to imitate the red and blue silk fibers of the genuine, but did not in fact contain red and blue silk fibers. The record contains proof of many other facts concerning the maneuvers of defendants in an attempt to either produce counterfeit currency or to swindle other persons who might be willing to join them in some such unlawful scheme, all of which may have been pertinent to another count of the indictment on which the Court directed a verdict of not guilty, but have no direct bearing upon the count now before us and need not be detailed.

The decision turns upon the construction to be given the statute and particularly the word "similar" and the phrase "adapted to the making of any such obligation or other security." Appellants contend that the paper, the possession of which is prohibited by the statute is paper similar to the distinctive paper adopted by the Secretary of the Treasury and adapted to the making of genuine government obligations and securities. The District Attorney contends that the paper contemplated by the statute is paper, which if printed as a counterfeit obligation, would pass as currency in the general trade of the United States. Appellants assert that the test is not whether it would pass as currency in the general trade of the country, but whether it is in fact adapted to the making of valid government obligations.

Webster defines the word "similar" to mean "nearly corresponding, resembling in many respects, somewhat like." Winston's simplified dictionary says, "having a more or less marked resemblance or correspondence to one another or to something else, analogous, like but not exactly the same, of the same nature."

We think that "similar" does not import "exactly alike" but is to be understood in its usual and ordinary meaning of having a "marked resemblance" to, or of the same general nature, degree, or order. Under the facts, therefore, we think a jury was justified in saying that the paper in question was similar to the genuine government paper. This, however, is not sufficient—it must also be "adapted to the making of any such obligation or other security."

The recognized authorities define the transitive verb adapt to mean—to make suitable; cause to conform; make fit by alteration. They define the adjective adaptable to mean—easily fitted or made suitable; easily and quickly able to conform to new or strange circumstances; that can be adapted or can easily adapt itself. The word "adapted" is not specifically defined in the authorities but is the past tense of the transitive verb "adapt." Following through the meaning of the verb it may be said to indicate that the object referred

to has been made suitable; has been made to conform to; has been made fit by alteration.

The government urges a construction of the word "adapted" as though it means the same as "adaptable"—easily made suitable. It is to be noted, however, that Congress has chosen the word "adapted" and we cannot agree that it is synonymous with "adaptable." Rather, we think that it should be accorded its ordinary and commonly accepted meaning to connote something that has already been made fit for the purpose indicated. An application of this meaning indicates that Congress had in mind paper that had been made fit or suitable to the making of such obligations or securities and not paper that could be made fit or that was adaptable.

The words "such obligations or other security" are also involved. We think such words refer back to the genuine obligations and securities of the United States. These are the plain words of both the statute and the indictment. The defendants were not charged with possessing paper adapted to the making of counterfeit currency that might reasonably be expected to pass in the trade of the country, but were charged with possessing paper adapted to making genuine obligations of the United States. Under the facts the paper they possessed cannot be said to be adapted to the making of genuine obligations because it does not contain at least one feature of the "distinctive paper" adopted by the government, in that it contains no red and blue silk fibers. We think the argument of the District Attorney is directly in the face of the plain words of the statute. There is nothing in the Act to indicate that Congress was undertaking to outlaw possession of the numerous kinds of high grade bond paper that might reasonably be said to be "similar" to that officially adopted by the government but rather, we think, they were striking at the evil of someone unlawfully coming into possession of the genuine government paper. This is further borne out by the language of the Act "except under the authority of the Secretary of the Treasury or some other proper officer of the United States." No one would have occasion to request or receive authority from such public officials to possess any paper unless it were the genuine paper of the government. The Secretary of the Treasury would scarcely be called upon to grant authority to one to possess paper adapted only to the making of spurious obligations. Otherwise every manufacturer, merchant or printer, making, dealing in, or using the higher grade bond paper similar to that adopted by the government would be required under the terms of this act to gain the permission of the Secretary of the Treasury to lawfully possess such paper. No such situation was, of course, contemplated by Congress unless such paper is at the same time adapted to the making of such genuine obligations. Under the evidence before us much of the better grades of bond paper is so adapted except for the absence of the red and blue silk fibers.

On the other hand occasions arise where the Secretary of the Treasury may feel obliged to grant authority to some person to possess the genuine government paper. A chemist from the Bureau of Engraving and Printing appeared as a witness for the government in the instant case and produced as an exhibit what he testified was the genuine paper upon which the government prints its twenty dollar bills. For him to thus possess and produce the prohibited paper became lawful only by virtue of the authority granted him under this provision of the Act. We thus have a concrete application of this clause which gives it a meaning harmonious with the construction contended for by appellants.

It is to be noted that the bare possession of the prohibited paper completes the offense defined in the statute. It need not be possessed with the intent to counterfeit the obligations of the United States, and it need not be put to any other use. Not so with the offenses defined in the preceding paragraphs of the same section. In the first paragraph it is the use of the prohibited article; in the second it is the making of a plate in the likeness of a government plate; in the third it is the selling or bringing into the United States of any prohibited plate with the intent that it be used for a purpose other than the printing of government obligations; in the fourth, it is the possession of the prohibited plate with the intent to use in counterfeiting such obligations; in the fifth, it is the having possession of a spurious obligation with the intent to sell or use same; in the sixth, it is the making or selling of the prohibited article. In the seventh paragraph, however, which is the one under consideration, it is the possession of paper similar to that adopted by the government and adapted to the making of government obligations that is made the offense. Paper of the kind possessed by the defendants is in common use—it is on sale by every dealer and is possessed by thousands of citizens. Paper of the kind used by the government in printing currency is of a distinctive type in that it has impregnated red and blue silk fibers, a feature not present in commercial paper. It is not for sale by any merchant and cannot lawfully be purchased or possessed except by authority of the Secretary of the Treasury or other proper officer. It is faithfully guarded by the government from the moment of its manufacture until it is released for circulation as government obligations. Obviously it was the possession of paper, thus suitable for and adapted to the making of the genuine obligations that Congress was outlawing. It is freely conceded that the paper in question contained no such fibers. That someone had caused red and blue pencil marks to be placed upon the paper in an effort to simulate the genuine is immaterial so far as the offense charged in the second count of the indictment is concerned. It does not require an expert to observe at a single glance that such markings are not red and blue silk fibers.

So far as we are advised this particular clause of the Section under consideration has been before but one other Court of review. The

Second Circuit in the case of Krakowski v. U. S., 161 Fed. 88 (decided in 1908) had occasion to consider the same provision and there said: "The statute contemplates the adoption by the Secretary of the Treasury of a distinctive paper for government obligations and provides that it shall be unlawful, without authority from the Secretary or other proper official, to possess any paper similar to the distinctive paper and likewise adapted to the making of government securities. A paper which resembles the distinctive paper and also is of such character as to be suitable for the imprint of government obligations comes precisely within the terms of the statute. * * * The words 'adapted to the making of such obligations' clearly refer to the obligations of the United States just before mentioned in the statute. There is no room for reading anything else into the statute and no basis for doing so. Nothing indicates that Congress had in mind the possession of the many kinds of paper adapted to the making of counterfeit money, especially poor counterfeits."

We are in accord with this reasoning and believe that under the undisputed evidence here the defendants were not guilty of the offense defined by the statute and charged in the Second Count of the Indictment. There has been a misapprehension of the proper section of the statute applicable to the facts herein.

The judgment is reversed and the cause remanded.

Reversed and remanded.

LINDLEY, District Judge, dissenting:

The statutory construction adopted, it seems to me, is strained and over-literal and does violence to the intent of Congress. That legislative body, manifestly, was dealing with the possession of articles capable of use in counterfeiting obligations of the United States which might receive the ordinary citizen to whom such counterfeits might come. Thus we find condemned "plates, stones or other thing", in the possession of anyone other than the government, adapted or capable of being used in counterfeiting. We find condemned also engravings, photographs, prints or impressions of similar character and paper "similar" to official paper, "adapted to the making of any such obligation." The evil in all these sought to be reached lies not in their use in making bona fide obligations but in their quality of being susceptible of improper use in making plausible counterfeit obligations, such as might readily deceive the public.

So the construction adopted rightfully concludes that the condemned paper need not be "exactly like" official paper. But to me the forbidden article was meant to include all fabrications of such similitude to official paper as, when used, might easily deceive, not the expert, but every day business men or other citizens amongst whom the criminal hopes to circulate counterfeits. The paper in question is included within such rule.

Nor can I agree that it is plainly discernible that the blue and red tracings are superficial pencil marks. After careful examination of

the marks with the aid of a magnifying glass, I am wholly uncertain as to whether they are woven in the fabric or traced. Citizens, among whom counterfeits circulate, do not ordinarily use magnifying glasses. I think the judgment should be affirmed.

Teste:

Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

And on the same day, to wit, the 23rd day of March 1937, the following further proceedings were had and entered of record, to wit:

United States Circuit Court of Appeals for the Seventh Circuit

Tuesday, March 23, 1937

Court met pursuant to adjournment before Hon. Evan A. Evans, Circuit Judge; Hon. Walter C. Lindley, District Judge; Hon. Charles G. Briggle, District Judge.

6096

RALPH RAYNOR

vs.

THE UNITED STATES OF AMERICA

Appeal from the District Court of the United States for the Southern District of Indiana, Indianapolis Division

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Indiana, Indianapolis Division, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby reversed, and that this cause be and the same is hereby remanded to the said District Court.

And afterwards, to wit, on the 14th day of April 1937, there was filed in the office of the Clerk of this court a petition for rehearing, which said petition for rehearing is not copied here.

And afterwards, to wit, on the 22nd day of April 1937, there was filed in the office of the Clerk of this court an answer to petition for rehearing, which said answer to petition for rehearing is not copied here.

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And afterwards, to wit, on the 11th day of May 1937, the following further proceedings were had and entered of record, to wit:

United States Circuit Court of Appeals for the Seventh Circuit

Tuesday, May 11, 1937

Court met pursuant to adjournment before Hon. Evan A. Evans, Circuit Judge; Hon. Walter C. Lindley, District Judge; Hon. Charles G. Briggle, District Judge.

6096

RALPH RAYNOR

vs.

THE UNITED STATES OF AMERICA

Appeal from the District Court of the United States for the Southern District of Indiana; Indianapolis Division

It is ordered by the Court that the petition for rehearing in this cause be and the same is hereby denied.

United States Circuit Court of Appeals for the Seventh Circuit

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten and printed pages, numbered from 1 to 12, inclusive, contain a true copy of the proceedings had and papers filed (excepting appearances of counsel, briefs of counsel, the petition for rehearing and the answer thereto), in the case of Ralph Raynor vs. the United States of America, No. 6096, October Term, 1936, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this seventh day of June A. D. 1937.

[SEAL]

FREDERICK G. CAMPBELL,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.
By K. J. CARRICK, *Chief Deputy Clerk.*

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held in the United States Court House in the City of Chicago in said Seventh Circuit, on the sixth day of October of the October Term, in the year of our Lord One Thousand Nine Hundred and Thirty-six and of our Independence the One Hundred and Sixty-first.

6097

CHETT FOWLER

vs.

THE UNITED STATES OF AMERICA

Appeal from the District Court of the United States for the Southern District of Indiana, Indianapolis Division

And on, to wit, the 24th day of November 1936, there was filed in the office of the Clerk of this court a notice of appeal and grounds of appeal, which said notice of appeal and grounds of appeal are not copied here as the same appear on Page 88 of the printed record in this cause certified herewith.

And on the same day, to wit, the 24th day of November 1936, there was filed in the office of the Clerk of this court a Clerk's statement of docket entries forwarded under Rule IV, which said Clerk's statement of docket entries is in the words and figures following, to wit:

Form of Clerk's Statement of Docket Entries to be Forwarded Under Rule IV

Form No. 3

District Court of the United States, Southern District of Indiana, Indianapolis Division

No. 6664

UNITED STATES

vs.

CHETT FOWLER

Indictment for violation of the provisions of 18 U. S. C. A. 264 by possessing paper similar to a distinctive paper adopted by the Secretary of the Treasury for making Government obligations, without authority of the Secretary of the Treasury. Indictment filed October 24, 1936.

Arraignment: October 30, 1936.

Plea to Indictment: Not guilty on October 30, 1936.

Trial by Jury: November 12, 1936. At conclusion of Government's evidence the defendants file motion for directed verdict. Overruled and exception. Evidence concluded. Defendants file motion for directed verdict.

Verdict: November 13, 1936. Defendant's motion for directed verdict sustained as to Count 1 and overruled as to Count 2. Exception. Directed verdict of not guilty on Count 1. Jury returns verdict of guilty as to Count 2.

Judgment: Two years Penitentiary, November 16, 1936.
Notice of Appeal filed November 19, 1936.
Attest:
[SEAL] ALBERT C. SOGEMEIER, *Clerk.*
NOVEMBER 19, 1936.

[Endorsed:] Filed Nov. 24, 1936. Frederick G. Campbell, Clerk.

And afterwards, to wit, on the 19th day of December 1936, there was filed in the office of the Clerk of this court a certified copy of order of the District Court of the United States extending time for filing bill of exceptions, etc., which said certified copy of order of the District Court is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Southern District of Indiana, ss.:

District Court of the United States for the Southern District of Indiana, Indianapolis Division

Nov. Term, 1936. No. 6664

UNITED STATES

v.

RALPH RAYNOR, CHETT FOWLER, ALIAS CHESS FOWLER

At Indianapolis, in said District, on the 14th day of December 1936, before the Honorable Robert C. Baltzell, Judge

Come now the defendants Ralph Raynor and Chett Fowler by their counsel, and comes also the United States of America by the United States Attorney, and the defendants within the time allowed by law and by the rules of the United States Supreme Court and of the United States Circuit Court of Appeals for the Seventh Circuit, and within thirty days after the taking of the Appeal in this case, file their petition for an extension of time in which to file their Bill of Exceptions which is as follows, to-wit:

(H. I.)

And the Court having examined said petition, finds that the interest of justice requires that said petition should be granted.

It is, therefore, ordered, that the time within which the defendants may settle and file their Bill of Exceptions, and the time within which they may file their Assignment of Errors, and the time within which the Clerk of this Court shall transmit the transcript of the record to the Clerk of the Circuit Court of Appeals for the seventh

Circuit, shall be, and the same is hereby extended to and including the thirtieth day of December 1936.

UNITED STATES OF AMERICA,
Southern District of Indiana, Indianapolis Division, ss:

I, Albert G. Sogemeier, Clerk of the United States District Court in and for the Southern District of Indiana, do hereby certify that the annexed and foregoing is a true and full copy of an order extending time for filing bill of exceptions and for filing transcript on appeal, made and entered December 14, 1936, In the Cause of United States vs. Ralph Raynor, Chett Fowler, alias Chess Fowler, No. 6664 Cr. now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Indianapolis this 17th day of December, A. D. 1936.

ALBERT C. SOGEMEIER,
Clerk.

[SEAL] By ESSA PHILLIPS,
Deputy Clerk.

[Endorsed:] Filed Dec. 19, 1936. Frederick G. Campbell, Clerk.

And afterwards, to wit, on the 29th day of December 1936, there was filed in the office of the Clerk of this court a certificate to exhibits, which said certificate is in the words and figures following, to wit:

Original exhibits in the case of

6664 Cr.

UNITED STATES

vs.

RALPH RAYNOR ET AL.

I, Albert C. Sogemeier, Clerk U. S. District Court for the Southern District of Indiana, do hereby certify that this envelope contains the original exhibits in the above case as follows: Government's Exhibit 3; Defendants' Exhibits 1, 1A, 2, 3, 4, 5, 7, 8, 9, 9-A, and 9-B, transmitted with the transcript on appeal in compliance with an order of Court entered December 28, 1936.

Witness my hand and the seal of said Court this 28th day of December, 1936.

[SEAL] ALBERT C. SOGEMEIER, *Clerk.*

[Endorsed:] Filed Dec. 29, 1936. Frederick G. Campbell, Clerk.

And afterwards, to wit, on the 28th day of January 1937, there was filed in the office of the Clerk of this court a letter from Mr. William

E. Reiley to the Clerk of this court, which said letter is in the words and figures following, to wit:

William E. Reiley, Lawyer

Railway Exchange Building,
Indianapolis, Indiana, January 27, 1937.

Telephone Riley 7166

Clerk of the United States Circuit Court of Appeals, Seventh District, Chicago, Illinois

Re: Chett Fowler *vs.* United States of Amer. #6097.

Dear Sir: I have heretofore entered my appearance in the above-entitled cause and meant to file a brief on behalf of Chett Fowler. About a week ago it became quite apparent that unfortunately he could not raise the money to have the brief printed, and I abandoned the case, with his consent, and wrote to Mr. John Elliott Byrne of Chicago, asking him if he would not, as a gratuity, represent Fowler and write a brief on his behalf in connection with the case of Ralph Raynor (No. 6096, your records, both cases having been tried together). Yesterday I received a copy of Mr. Byrne's brief and I note with satisfaction that he did include Chett Fowler's name in his brief, and will no doubt argue the case for both of the defendants in the court below.

I am writing you this in order to acquaint you with the facts so that if question arises, you may acquaint the court with the facts.

The reason I did not write a brief and appear to argue the same, was that Chett Fowler unfortunately could not raise the money to have the brief printed. For that reason, I am withdrawing my appearance and regret that this could not be done sooner, but the time was very short and up until the last minute I hoped that he could get the money for the brief, and then I waited a few days to see if Mr. Byrne was including Fowler before acquainting you with the facts.

If it is of any interest to the Court, Fowler paid me no fee. He gave me a note which I cancelled and returned to him.

WER:WB

Yours truly,

William E. Reiley.

[Endorsed:] Filed Jan. 28, 1937. Frederick G. Campbell, Clerk.

And afterward, to wit, on the 29th day of January 1937, the following further proceedings were had and entered of record, to wit:

United States Circuit Court of Appeals for the Seventh Circuit

Friday, January 29, 1937

Court met pursuant to adjournment before Hon. Evan A. Evans, Circuit Judge; Hon. Walter C. Lindley, District Judge; Hon. Charles G. Briggle, District Judge.

6097

CHETT FOWLER

vs.

THE UNITED STATES OF AMERICA

Appeal from the District Court of the United States for the Southern District of Indiana, Indianapolis Division

Now this day come the parties by their counsel, and this cause comes on to be heard on the printed record and briefs of counsel, and on oral argument by Mr. John Elliott Byrne, counsel for appellant, and by Mr. Paul A. Pfister, counsel for appellee, and the Court having heard the same takes this matter under advisement.

And afterward, to wit, on the 23rd day of March 1937, there was filed in the office of the Clerk of this court the opinion of the court, which said opinion is in the words and figures following, to wit:

March 23, 1937

EVANS, Circuit Judge, and LINDLEY and BRIGGLE, District Judges

BRIGGLE, District Judge: The defendants were convicted in the District Court under the second count of an indictment charging that they "on or about the 9th day of October 1936, after a distinctive paper had been adopted by the Secretary of the Treasury of the United States for the obligations and other securities of the United States, did then and there unlawfully, wilfully, knowingly, and feloniously have in their possession * * * similar paper adapted to the making of such obligations and other securities, without the authority of the Secretary of the Treasury or any other proper officer of the United States." Defendants prosecute separate appeals, but as the same questions are involved in each they will be disposed of in one opinion.

The section of the statute under which defendants were convicted (Crim. Code, Sec. 150, Title 18, U. S. C. A., Sec. 264) consists of one sentence, separated into seven distinct subdivisions by semi-colons. It is the last of these seven subdivisions with which we are here concerned, but for a better understanding the entire section is appended in the margin.[2] That portion here involved provides that "whoever

[2] SEC. 264. (Criminal Code, sec 150) Using plates to print notes without authority; distinctive paper. Whoever, having control, custody, or possession of any plate, stone, or other thing, or any part thereof, from which has been printed, or which may be prepared by direction of the Secretary of the Treasury for the purpose of printing any obligation or other security of the United States, shall use such plate, stone, or other thing, or any part thereof, or knowingly suffer the same to be used for the purpose of printing any such or similar obligation or other security, or any part thereof, except as may be printed for the use of the United States by order of the proper officer thereof; or whoever by any way, art, or means shall make or execute, or cause or procure to be made or executed, or shall assist in making or executing any plate, stone, or other thing in the likeness of any plate designated for the printing of such obligation or other security; or whoever shall sell any such plate, stone, or other thing, or bring into the United States

shall have or retain in his control or possession, after a distinctive paper has been adopted by the Secretary of the Treasury for the obligations and other securities of the United States, any similar paper adapted to the making of any such obligation or other security, except under the authority of the Secretary of the Treasury or some other proper officer of the United States * * *."

The pertinent facts are without substantial dispute and are as follows: The Secretary of the Treasury of the United States adopted in 1928 a distinctive paper for the printing of government obligations and securities, which was a high grade rag bond paper with short, fine, red and blue silk fibers impregnated. The silk fibers are placed in the pulp and distributed throughout the paper at the time of manufacture and are visible to the eye after the paper is manufactured and after the currency or obligations are printed. This distinctive paper is manufactured for the government under a contract with a private concern upon an ordinary paper machine. As it comes from the machine it is put under government guard, cut to the size specified, put in sealed cases and delivered under guard to Bureau of Printing and Engraving of the Treasury Department.

The defendants were found in possession of a small piece of paper, introduced in evidence as Government's Exhibit 3 which was a high grade bond paper, cut the size of ordinary currency and approximately the same color, weight, thickness, and opacity as the "distinctive" government paper. It "rattled" very much the same on crushing, had small, irregular red and blue lines on the surface (apparently pencil marks) made to imitate the red and blue silk fibers of the genuine, but did not in fact contain red and blue silk fibers. The record contains proof of many other facts concerning the maneuvers of defendants in an attempt to either produce counterfeit currency or to swindle other persons who might be willing to join them in some such unlawful scheme, all of which may have been pertinent to another count of the indictment on which the Court directed a verdict of not

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or any place subject to the jurisdiction thereof, from any foreign place, any such plate, stone, or other thing, except under the direction of the Secretary of the Treasury or other proper officer, or with any other intent, in either case, than that such plate, stone, or other thing be used for the printing of the obligations or other securities of the United States; or whoever shall have in his control, custody, or possession any plate, stone, or other thing in any manner made after or in the similitude of any plate, stone, or other thing, from which any such obligation or other security has been printed, with intent to use such plate, stone, or other thing, or to suffer the same to be used in forging or counterfeiting any such obligation or other security, or any part thereof; or whoever shall have in his possession or custody, except under authority from the Secretary of the Treasury or other proper officer, any obligation or other security made or executed, in whole or in part, after the similitude of any obligation or other security, issued under the authority of the United States, with intent to sell or otherwise use the same; or whoever shall print, photograph, or in any other manner make or execute, or cause to be printed, photographed, made, or executed, or shall aid in printing, photographing, making, or executing any engraving, photograph, print, or impression in the likeness of any such obligation or other security, or any part thereof, or shall sell any such engraving, photograph, print, or impression, except to the United States, or shall bring into the United States or any place subject to the jurisdiction thereof, from any foreign place, any such engraving, photograph, print, or impression, except by direction of some proper officer of the United States; or whoever shall have or retain in his control or possession, after a distinctive paper has been adopted by the Secretary of the Treasury for the obligations and other securities of the United States, any similar paper adapted to the making of any such obligation or other security, except under the authority of the Secretary of the Treasury or some other proper officer of the United States, shall be fined not more than $5,000 or imprisoned not more than fifteen years, or both. (R. S. Sec. 5430; Mar. 4, 1909, c. 321, Sec. 150, 35 Stat. 1116.)

guilty, but have no direct bearing upon the count now before us and need not be detailed.

The decision turns upon the construction to be given the statute and particularly the word "similar" and the phrase "adapted to the making of any such obligation or other security." Appellants contend that the paper, the possession of which is prohibited by the statute, is paper similar to the distinctive paper adopted by the Secretary of the Treasury and adapted to the making of genuine government obligations and securities. The District Attorney contends that the paper contemplated by the statute is paper which, if printed as a counterfeit obligation, would pass as currency in the general trade of the United States. Appellants assert that the test is not whether it would pass as currency in the general trade of the country, but whether it is in fact adapted to the making of valid government obligations.

Webster defines the word "similar" to mean "nearly corresponding, resembling in many respects; somewhat like." Winston's simplified dictionary says, "having a more or less marked resemblance or correspondence to one another or to something else, analogous, like but not exactly the same, of the same nature."

We think that "similar" does not import "exactly alike" but is to be understood in its usual and ordinary meaning of having a "marked resemblance" to, or of the same general nature, degree, or order. Under the facts, therefore, we think a jury was justified in saying that the paper in question was similar to the genuine government paper. This, however, is not sufficient—it must also be "adapted to the making of any such obligation or other security."

The recognized authorities define the transitive verb adapt to mean—to make suitable; cause to conform; make it by alteration. They define the adjective adaptable to mean—easily fitted or made suitable; easily and quickly able to conform to new or strange circumstances; that can be adapted or can easily adapt itself. The word "adapted" is not specifically defined in the authorities but is the past tense of the transitive verb "adapt." Following through the meaning of the verb it may be said to indicate that the object referred to has been made suitable; has been made to conform to; has been made fit by alteration.

The government urges a construction of the word "adapted" as though it means the same as "adaptable"—easily made suitable. It is to be noted, however, that Congress has chosen the word "adapted" and we cannot agree that it is synonymous with "adaptable." Rather, we think that it should be accorded its ordinary and commonly accepted meaning to connote something that has already been made fit for the purpose indicated. An application of this meaning indicates that Congress had in mind paper that had been made fit or suitable to the making of such obligations or securities and not paper that could be made fit or that was adaptable.

The words "such obligations or other security" are also involved. We think such words refer back to the genuine obligations and securi-

ties of the United States. These are the plain words of both the statute and the indictment. The defendants were not charged with possessing paper adapted to the making of counterfeit currency that might reasonably be expected to pass in the trade of the country, but were charged with possessing paper adapted to making genuine obligations of the United States. Under the facts the paper they possessed cannot be said to be adapted to the making of genuine obligations because it does not contain at least one feature of the "distinctive paper" adopted by the government, in that it contains no red and blue silk fibers. We think the argument of the District Attorney is directly in the face of the plain words of the statute. There is nothing in the Act to indicate that Congress was undertaking to outlaw possession of the numerous kinds of high grade bond paper that might reasonably be said to be "similar" to that officially adopted by the government but rather, we think, they were striking at the evil of someone unlawfully coming into possession of the genuine government paper. This is further borne out by the language of the Act "except under the authority of the Secretary of the Treasury or some other proper officer of the United States." No one would have occasion to request or receive authority from such public officials to possess any paper unless it were the genuine paper of the government. The Secretary of the Treasury would scarcely be called upon to grant authority to one to possess paper adapted only to the making of spurious obligations. Otherwise every manufacturer, merchant, or printer making, dealing in or using the higher grade bond paper similar to that adopted by the government would be required under the terms of this act to gain the permission of the Secretary of the Treasury to lawfully possess such paper. No such situation was, of course, contemplated by Congress unless such paper is at the same time adapted to the making of such genuine obligations. Under the evidence before us much of the better grades of bond paper is so adapted except for the absence of the red and blue silk fibers.

On the other hand occasions arise where the Secretary of the Treasury may feel obliged to grant authority to some person to possess the genuine government paper. A chemist from the Bureau of Engraving and Printing appeared as a witness for the government in the instant case and produced as an exhibit what he testified was the genuine paper upon which the government prints its twenty dollar bills. For him to thus possess and produce the prohibited paper became lawful only by virtue of the authority granted him under this provision of the Act. We thus have a concrete application of this clause which gives it a meaning harmonious with the construction contended for by appellants.

It is to be noted that the bare possession of the prohibited paper completes the offense defined in the statute. It need not be possessed with the intent to counterfeit the obligations of the United States, and it need not be put to any other use. Not so with the offenses de-

fined in the preceding paragraphs of the same section. In the first paragraph it is the use of the prohibited article; in the second it is the making of a plate in the likeness of a government plate; in the third it is the selling or bringing into the United States of any prohibited plate with the intent that it be used for a purpose other than the printing of government obligations; in the fourth, it is the possession of the prohibited plate with the intent to use in counterfeiting such obligations; in the fifth, it is the having possession of a spurious obligation with the intent to sell or use same; in the sixth, it is the making or selling of the prohibited article. In the seventh paragraph however, which is the one under consideration, it is the possession of paper similar to that adopted by the government and adapted to the making of government obligations that is made the offense. Paper of the kind possessed by the defendants is in common use—it is on sale by every dealer and is possessed by thousands of citizens. Paper of the kind used by the government in printing currency is of a distinctive type in that it has impregnated red and blue silk fibers, a feature not present in commercial paper. It is not for sale by any merchant and cannot lawfully be purchased or possessed except by authority of the Secretary of the Treasury or other proper officer. It is faithfully guarded by the government from the moment of its manufacture until it is released for circulation as government obligations. Obviously it was the possession of paper, thus suitable for and adapted to the making of the genuine obligations that Congress was outlawing. It is freely conceded that the paper in question contained no such fibers. That someone had caused red and blue pencil marks to be placed upon the paper in an effort to simulate the genuine is immaterial so far as the offense charged in the second count of the indictment is concerned. It does not require an expert to observe at a single glance that such markings are not red and blue silk fibers.

So far as we are advised this particular clause of the Section under consideration has been before but one other Court of review. The Second Circuit in the case of Krakowski v. U. S., 161 Fed. 88 (decided in 1908) had occasion to consider the same provision and there said: "The statute contemplates the adoption by the Secretary of the Treasury of a distinctive paper for government obligations and provides that it shall be unlawful without authority from the Secretary or other proper official, to possess any paper similar to the distinctive paper and likewise adapted to the making of government securities. A paper which resembles the distinctive paper and also is of such character as to be suitable for the imprint of government obligations comes precisely within the terms of the statute. * * * The words 'adapted to the making of such obligations' clearly refer to the obligations of the United States just before mentioned in the statute. There is no room for reading anything else into the statute and no basis for doing so. Nothing indicates that Congress had in mind the possession of the many kinds of paper adapted to the making of counterfeit money, especially poor counterfeits."

We are in accord with this reasoning and believe that under the undisputed evidence here the defendants were not guilty of the offense defined by the statute and charged in the Second Count of the Indictment. There has been a misapprehension of the proper section of the statute applicable to the facts herein.

The judgment is reversed and the cause remanded.

Reversed and remanded.

LINDLEY, District Judge, dissenting: The statutory construction adopted, it seems to me, is strained and over-literal and does violence to the intent of Congress. That legislative body, manifestly, was dealing with the possession of articles capable of use in counterfeiting obligations of the United States which might deceive the ordinary citizen to whom such counterfeits might come. Thus we find condemned "plates, stones, or other thing", in the possession of anyone other than the government, adapted or capable of being used in counterfeiting. We find condemned also engravings, photographs, prints, or impressions of similar character and paper "similar" to official paper, "adapted to the making of any such obligation." The evil in all these sought to be reached lies not in their use in making bona fide obligations but in their quality of being susceptible of improper use in making plausible counterfeit obligations, such as might readily deceive the public.

So the construction adopted rightfully concludes that the condemned paper need not be "exactly like" official paper. But to me the forbidden article was meant to include all fabrications of such similitude to official paper as, when used, might easily deceive, not the expert, but every day business men or other citizens amongst whom the criminal hopes to circulate counterfeits. The paper in question is included within such rule.

Nor can I agree that it is plainly discernible that the blue and red tracings are superficial pencil marks. After careful examination of the marks with the aid of a magnifying glass, I am wholly uncertain as to whether they are woven in the fabric or traced. Citizens, among whom counterfeits circulate, do not ordinarily use magnifying glasses. I think the judgment should be affirmed.

And on the same day, to wit, the 23rd day of March 1937, the following further proceedings were had and entered of record, to wit:

United States Circuit Court of Appeals for the Seventh Circuit

Tuesday, March 23, 1937

Court met pursuant to adjournment before Hon. Evan A. Evans, Circuit Judge; Hon. Walter C. Lindley, District Judge; Hon. Charles G. Briggle, District Judge.

6097

CHETT FOWLER

vs.

THE UNITED STATES OF AMERICA

Appeal from the District Court of the United States for the Southern District of Indiana, Indianapolis Division

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Indiana, Indianapolis Division, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby reversed, and that this cause be and the same is hereby remanded to the said District Court.

And afterwards, to wit, on the 14th day of April 1937, there was filed in the office of the Clerk of this court a petition for rehearing, which said petition for rehearing is not copied here.

And afterwards, to wit, on the 22nd day of April 1937, there was filed in the office of the Clerk of this court an answer to petition for rehearing, which said answer to petition for rehearing is not copied here.

And afterwards, to wit, on the 11th day of May 1937, the following further proceedings were had and entered of record, to wit:

United States Circuit Court of Appeals for the Seventh Circuit

Tuesday, May 11, 1937

Court met pursuant to adjournment before Hon. Evan A. Evans, Circuit Judge; Hon. Walter C. Lindley, District Judge; Hon. Charles G. Briggle, District Judge.

6097

CHETT FOWLER

vs.

THE UNITED STATES OF AMERICA

Appeal from the District Court of the United States for the Southern District of Indiana, Indianapolis Division

It is ordered by the Court that the petition for rehearing in this cause be and the same is hereby denied.

United States Circuit Court of Appeals for the Seventh Circuit

I, FREDERICK G. CAMPBELL, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the forego-

ing typewritten and printed pages, numbered from 1 to 14, inclusive, contain a true copy of the proceedings had and papers filed (excepting appearances of counsel, briefs of counsel, petition for a rehearing and answer thereto) in the case of Chett Fowler, appellant vs. The United States of America, appellee, No. 6097, October Term, 1936, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this Seventh day of June A. D. 1937.

[SEAL]

FREDERICK G. CAMPBELL,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.
By F. J. CARRICK,
Chief Deputy Clerk.

U. S. GOVERNMENT PRINTING OFFICE: 1937

125 Supreme Court of the United States

No. 146. October Term 1937

Order allowing certiorari

Filed October 11, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice BLACK took no part in the consideration and decision of this application.

126 Supreme Court of the United States

No. 147. October Term, 1937

Order allowing certiorari

Filed October 11, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice BLACK took no part in the consideration and decision of this application.

U. S. GOVERNMENT PRINTING OFFICE: 1937

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In the Supreme Court of the United States

OCTOBER TERM 1937

No. 146

THE UNITED STATES OF AMERICA, PETITIONER

v.

RALPH RAYNOR

No. 147

THE UNITED STATES OF AMERICA, PETITIONER

v.

CHETT FOWLER

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The Solicitor General, on behalf of the United States prays that writs of certiorari issue to review the judgments of the United States Circuit Court of Appeals for the Seventh Circuit entered in the above cases on March 23, 1937, reversing the judgment of the District Court of the United States for the Southern District of Indiana (R. 110, 122). A petition for rehearing was denied by the Circuit Court of Appeals on May 11, 1937 (R. 112, 123).

OPINION BELOW

The charge of the trial court appears at R. 72–80. The opinion of the Circuit Court of Appeals has not yet been reported (R. 105–111, 117–122).

JURISDICTION

The judgments of the Circuit Court of Appeals were entered March 23, 1937 (R. 111, 122–123). A petition for rehearing was denied May 11, 1937 (R. 112, 123). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, and under Rule XI of the Rules of Practice and Procedure in Criminal Cases, promulgated by this Court May 7, 1934.

QUESTION PRESENTED

Whether the provisions of Section 150 of the Criminal Code, under which the respondents were convicted, relate only to genuine Government paper or paper which the Government would use in the printing of its own obligations and securities.

STATUTE INVOLVED

Section 150 of the Criminal Code (U. S. C., Title 18, Section 264), so far as pertinent, provides:

> * * * whoever shall have or retain in his control or possession, after a distinctive paper has been adopted by the Secretary of the Treasury for the obligations and other securities of the United States, any similar paper adapted to the making of any such

obligation or other security, except under the authority of the Secretary of the Treasury or some other proper officer of the United States, shall be fined not more than $5,000, or imprisoned not more than fifteen years, or both.

STATEMENT

The respondents were convicted in the District Court of the United States for the Southern District of Indiana under the second count of an indictment charging that they "on or about the 9th day of October, 1936, after a distinctive paper had been adopted by the Secretary of the Treasury of the United States for the obligations and other securities of the United States, did then and there unlawfully, wilfully, knowingly, and feloniously have in their possession * * * similar paper adapted to the making of such obligations and other securities without the authority of the Secretary of the Treasury or any other proper officer of the United States" (R. 3, 7).

A motion for new trial was denied (R. 10). Respondent Raynor received a sentence of four years imprisonment and respondent Fowler a sentence of two years imprisonment (R. 10). On March 23, 1937, the Circuit Court of Appeals for the Seventh Circuit reversed the judgment of the District Court and remanded the causes, one judge dissenting (R. 105–111, 117–123). Thereafter a petition by the Government for rehearing was denied (R. 112, 123).

The pertinent facts in the consideration of this petition involve a study and a comparison of Government Exhibit 3 and Government Exhibit 28.

Exhibit 28 is genuine Government paper which the Government itself would use in the making of its own obligations and securities (R. 53). Exhibit 3 is the paper found in the control and possession of the respondents Raynor and Fowler (R. 22, 30, 32). Both Exhibit 28 and Exhibit 3 are high grade rag bond paper (R. 53, 31, 70) of approximately the same type (R. 59) with color nearly matching (R. 69), of practically the same weight (R. 70, 49), with a similar feel and crackle (R. 31), with about the same toughness (R. 56), with about the same tearing resistance (R. 56), and with the same crinkle (R. 48).

Impregnated and distributed throughout Exhibit 28 are short fine red and blue silk fibers in the form of curls (R. 47), which are visible to the naked eye (R. 32, 53). Without careful examination, they resemble red and blue lines (R. 53). In Exhibit 3, however, the red and blue curls which resemble the impregnated short fine silk fibers of Exhibit 28 are merely surface markings (R. 51, 32, 64). But they are similar, and approximate the appearance of a fiber (R. 47, 48, 54), although apparently not as plentiful (R. 70).

Exhibit 3 was cut to the size of the genuine United States currency (R. 30, 31). One defense witness testified that Exhibit 3 is "pretty nearly like" Exhibit 28 (R. 67). Another defense wit-

ness testified that the average man would not be able to "pick" these (Exhibit 3 and Exhibit 28) apart (R. 70).

In the Circuit Court of Appeals the respondents contended, in effect, that the only paper coming within the scope of the provisions of the statute under which they were convicted was genine Government paper or paper upon which the Government would print its genuine obligations and securities. While the court below does not so state, this question was apparently raised in the trial court by exceptions to certain testimony, to the refusal of the trial judge to direct a verdict in favor of the respondents, and to certain portions of the charge to the jury. (Assignment of Errors, R. 89–92.) The position of the Government is that the paper contemplated by the statute need not be genuine Government paper but rather paper which the average individual would believe to be the distinctive genuine paper adopted by the Government.

The Circuit Court of Appeals, in upholding the contention of the respondents, said that by the statute Congress was "striking at the evil of someone unlawfully coming into possession of the genuine government paper" and that the statute did not apply to any paper not impregnated with red and blue silk fibers, however similar in appearance this paper might be to the genuine Government paper (R. 108, 120). The dissenting judge in that court was of the opinion, however, that this was a strained and over-literal construction of the statute

and did violence to the intent of Congress; that the "legislative body, manifestly, was dealing with the possession of articles capable of use in counterfeiting obligations of the United States which might deceive the ordinary citizen to whom such counterfeits might come." (R. 110, 122.)

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals for the Seventh Circuit erred:

(1) In construing the provisions of the statute under which the respondents were convicted as relating only to genuine Government paper or paper which the Government would use in the printing of its own obligations and securities.

(2) In holding that the statute did not apply to any paper not impregnated with red and blue silk fibers, however similar in appearance this paper might be to the genuine Government paper.

(3) In reversing the judgment of the District Court of the United States for the Southern District of Indiana.

REASONS FOR GRANTING THE WRIT

1. We submit that in construing the clause "similar paper adapted to the making of any such obligation or other security", appearing in the statutory provisions in question, as meaning solely the genuine Government paper or paper which the Government would use in printing its own obligations and securities, the court below has given such a construction to this clause as deprives the word

"similar" of its ordinary significance and meaning. While the court admits that

> Webster defines the word "similar" to mean "nearly corresponding, resembling in many respects, somewhat like." Winston's simplified dictionary says, "having a more or less marked resemblance or correspondence to one another or to something else, analogous, like but not exactly the same, of the same nature." (R. 107, 119.)

and, that therefore, the word "similar" as used in the statute "does not import 'exactly alike', but is to be understood in its usual and ordinary meaning of having a 'marked resemblance' to, or of the same general nature, degree or order" (R. 107, 119), so that the jury under the facts "was justified in saying that the paper in question was similar to the genuine Government paper" (R. 107, 119), the court then proceeded to give such an interpretation to the remainder of the clause in question as to deprive the word "similar" of its acknowledged meaning and significance by holding that the paper falling within the purview of the statute is not paper with a "more or less marked resemblance" to the genuine Government paper, but must in fact be the genuine Government paper or paper which the Government would use in the printing of its own obligations and securities. The court therefore held that although the paper in question was concededly similar in appearance to the Government paper, it did not fall within the statute because it did not contain the red and

blue silk fibers impregnated in the distinctive paper adopted by the Government (R. 108, 120).

It is apparent that the court's construction of the statutory provisions in question was influenced by the reasoning employed by the Circuit Court of Appeals for the Second Circuit in its decision in *Krakowski* v. *United States,* 161 Fed. 88. That court, in holding that the statute prohibits only "the unauthorized possession of Government paper" or the unauthorized possession of "paper which could be used for printing Government securities" felt "that the primary object of the statute was to prevent persons from having in their possession, without authority, the distinctive Government paper." It, therefore, was of the view that the statute was designed to accomplish the same purpose as the English statute to which it referred, which manifestly covered only the unauthorized purchase, receipt, custody, or possession of paper utilized by the British Government in printing its own obligations. We believe that a fundamental error in that decision is in the view that the giving to the word "similar" of its acknowledged connotation of "having a more or less marked resemblance" would have excluded from the purview of the statute the possession of the distinctive Government paper. We submit that if paper which has a more or less marked resemblance to the genuine Government paper is included within the ambit of the statute, *a fortiori*

the genuine Government paper would be within its scope.

2. In any event, it must be apparent, in view of the divergence of opinion among the various judges who have been called upon in this and the *Krakowski* cases to construe the statutory provisions involved,[1] that the statute manifestly requires construction, and hence warrants resort to the legislative history thereof, including consideration of the Congressional committee reports, the evils sought to be prevented or removed, and the repeated amendments progressively embracing the earlier operations incident to counterfeiting. *Duplex Co.* v. *Deering,* 254 U. S. 443, 445; *Ozawa* v. *United States,* 260 U. S. 178, 194; cf. *Caminetti* v. *United States,* 242 U. S. 470, 490.

This legislative history, we submit, discloses that Congress sought to bring within the scope of the statute all of the operations incident to counterfeiting, whether such operations occur in the later or the earlier stages of the process. It therefore follows that the statutory provisions in question should not be limited to the mere felonious taking, receiving, or making of genuine Government paper, as the court below in effect held.

[1] In this and the *Krakowski* cases two district judges and a circuit judge decided in favor of the Government, while one district judge and four circuit judges decided against the Government.

The first Federal counterfeiting statute was the Act of June 30, 1812, c. 111, 2 Stat. 766.[2] This Act, in Section 10 (*infra,* p. 17), contained a penal provision limited solely to the final stages of the counterfeiting process, i. e., the actual counterfeiting or forging of Treasury notes. The reach of this legislation was not materially enlarged in the reenactments of February 25, 1813, March 4, 1814, December 26, 1814, and February 24, 1815 (*infra,* pp. 17–20). Starting, however, with the Act of October 12, 1837, c. 2, Section 11, 5 Stat. 201, 203, *infra,* p. 20, certain of the earlier steps of the counterfeiting process, such as the engraving and possession of plates and the possession of paper to be used in counterfeiting, were included within the scope of the legislation, and thereafter, by repeated amendments, there had resulted such a progressive inclusion of the earlier counterfeiting operations as to cause a Special Joint Congressional Committee on Revision of Laws, at the time the legislation was incorporated in the Criminal Code as Section 150, to state in its report that

> This section [Criminal Code, Sec. 150; now U. S. C. Title 18, Sec. 264] is broadened so as to embrace every method which may be employed in counterfeiting the obligations of the United States, and its provisions are extended so as to apply in any place under

[2] This and all subsequent statutes referred to in the discussion of the legislative history are set forth in the Appendix (*infra,* pp. 17–36) in chronological order.

> the jurisdiction of the United States. (Sen. Rep. No. 10, Pt. I, p. 10, 60th Cong., 1st Sess.; House Rep. No. 2, Pt. I, p. 19, 60th Cong., 1st Sess.)

In addition, the punishment provided by the statute had been so increased that the maximum term of imprisonment which might be given was raised from ten years to fifteen years. (Act of February 25, 1862, c. 33, Sec. 7, 12 Stat. 348, *infra,* pp. 25–27.)

Viewing the particular statutory provisions here involved in the light of this general background disclosing the purpose of Congress expressly to penalize all of the steps in the counterfeiting process, it may be pointed out that these provisions had their genesis in Section 11 of the Act of October 12, 1837, *supra,* which, as stated, was the first of the series of amendments by which Congress sought to broaden its prior legislation by including not only the final stages of counterfeiting, but also the earlier stages thereof. As these provisions appeared in the Act of 1837 they read:

> That if any person * * * shall have in his custody or possession any paper adapted to the making of [Treasury] notes, and similar to the paper upon which any such notes shall have been issued, with intent to use such paper, or cause or suffer the same to be used, in forging or counterfeiting any of the notes issued as aforesaid; every such person * * * shall be sentenced * * *.

By the Act of February 25, 1862, c. 33, Section 7, 12 Stat. 345, 348, *infra*, p. 25, "bonds, coupons, or other securities" were included within the scope of the provisions.

It will be noted that one of the elements of the offense denounced by these provisions was *mens rea*, i. e., an intent to use the paper in forging or counterfeiting notes, bonds, coupons, and other securities of the United States. However, by the Act of June 30, 1864, c. 172, Section 11, 13 Stat. 218, 221, *infra*, p. 30, the statute was amended to read in substantially the same form as it now appears. As thus amended, it provided:

> That if any person * * * shall have or retain in his custody or possession, after a distinctive paper shall have been adopted by the Secretary of the Treasury for obligations and other securities of the United States, any similar paper adapted to the making of any such obligation or other security, except under authority of the Secretary of the Treasury, or some other proper officer of the United States, every person so offending shall * * * be punished * * *.

When the statute as thus amended is considered in the light of the avowed purpose of Congress to bring within its ambit all of the stages of the counterfeiting process, we submit that both the court below and the Circuit Court of Appeals for the Second Circuit in the *Krakowski* case misapprehended the import of the legislation when they declared in effect that its only purpose was to pro-

hibit the unauthorized possession of genuine Government paper. In view of the purpose manifested by the legislative background, it is unreasonable to believe that Congress intended to relax its fight against counterfeiters, as indicated by the court below and the Circuit Court of Appeals for the Second Circuit, but rather that the primary purpose of Congress was to give the Government another weapon in its effort to eradicate counterfeiting by eliminating the provision in the prior legislation as to *mens rea*, thereby making convictions simpler and surer through the removal of the difficulties usually incident to proof of criminal intent (cf. 50 Harvard Law Review, 618).

If, as we believe, the amendment had this purpose in view, it is evident that Congress intended that there should arise from the custody and possession alone of the prohibited paper a presumption that the paper was to be used in counterfeiting, and that the only purpose of the phrase "except under the authority of the Secretary of the Treasury, or some other proper officer of the United States", relied upon by the court below and the Circuit Court of Appeals for the Second Circuit, was to indicate the sole means by which this presumption could be rebutted. Of course it is undoubtedly true, as pointed out by the court below and the Circuit Court of Appeals for the Second Circuit, that an official authorization of the possession of non-genuine Government paper suitable for counterfeiting would be unique in

character, but as we have heretofore pointed out (*supra,* pp. 8–9), the statutory provisions in question cover not only paper suitable for counterfeiting but also the genuine Government paper. It is obvious, therefore, that the statutory exception has a permissible field of operation in so far as the genuine Government paper is concerned, and that the presumption raised by the possession of paper suitable for counterfeiting is, in effect, an irrebuttable presumption. It is only by according such a meaning to this exception that the statutory provisions involved are brought in harmony with the manifest aim of the legislation to punish counterfeiting in all its phases. The use of the statutory exception by the court below and the Circuit Court of Appeals for the Second Circuit for the purpose of supporting their argument that Congress contemplated prohibiting only the unauthorized possession of genuine Government paper can be accounted for, we submit, solely by reason of the fact that these courts were apparently not aware of the legislative history of the enactment. An examination of the briefs submitted to these courts discloses that such history was not referred to, nor was there any discussion of the legislative history in the opinions.

Furthermore, attention is directed to the fact that when the statutory provisions in question were incorporated into the Criminal Code, at which time, as heretofore stated (*supra,* pp. 10–11), the Joint Congressional Committee manifested its intent to

broaden the section "so as to embrace every method which may be employed in counterfeiting obligations of the United States", the word "control" was substituted for "custody", another advance in the Congressional determination to wipe out counterfeiting by including responsible principals who theretofore could not have been reached because they did not have technical custody or possession of the prohibited paper.

3. While it is impossible to determine at this time why a writ of certiorari was not applied for by the Government to review the adverse holding of the Circuit Court of Appeals for the Second Circuit in the *Krakowski* case, the result of that decision has been to make United States Attorneys unwilling to prosecute offenders where the only proof of guilt obtainable was possession of paper suitable for counterfeiting, regardless of the degree of resemblance to genuine Government paper. It is only where the evidence has disclosed the consummation of some step in the counterfeiting process subsequent to the possession of prohibited paper, that it has been possible to procure a conviction. The situation is intensified in the present cause. Even though the court below was apparently of the opinion that a conviction would have been warranted upon the first count of the indictment charging a later step in the counterfeiting process (R. 107, 110, 118, 122), which count was, however, dismissed at the conclusion of the case

by the trial court because of insufficiency of evidence, the result of the holding of the court below with respect to the count here involved, charging control and possession of prohibited paper, is to allow the respondents to escape punishment for counterfeiting activities. Successful eradication of counterfeiting clearly requires the detection and punishment of those participating in the earliest stages thereof. Since "Counterfeit money is not ordinarily made upon genuine Government paper" (R. 53), the holdings by the court below and the Circuit Court of Appeals for the Second Circuit to the effect that the statute reaches only the unauthorized control and possession of genuine Government paper hampers the administration of Federal justice. For this reason the construction of the statutory provisions in question should be authoritatively settled by this Court.

Wherefore, it is respectfully submitted that this petition should be granted.

STANLEY REED,
Solicitor General.

JUNE 1937.

APPENDIX

LEGISLATIVE HISTORY OF STATUTORY PROVISIONS INVOLVED

Act of June 30, 1812, c. 111, Sec. 10, 2 Stat. 766, 768:

> *'And be it further enacted,* That if any person shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged or counterfeited, or willingly aid or assist in falsely making, forging or counterfeiting any note in imitation of or purporting to be a treasury note aforesaid; or shall falsely alter, or cause or procure to be falsely altered, or willingly aid or assist in falsely altering any treasury note issued as aforesaid; or shall pass, utter or publish, or attempt to pass, utter or publish, as true, any false, forged or counterfeited note, purporting to be a treasury note as aforesaid, knowing the same to be falsely forged or counterfeited; or shall pass, utter or publish, or attempt to pass, utter or publish, as true, any falsely altered treasury note, issued as aforesaid, knowing the same to be falsely altered; every such person shall be deemed and adjudged guilty of felony, and, being thereof convicted by due course of law, shall be sentenced to be imprisoned and kept to hard labour for a period not less than three years nor more than ten years, and be fined in a sum not exceeding five thousand dollars.

Act of February 25, 1813, c. 27, Sec. 12, 2 Stat. 801, 803:

> *'And be it further enacted,* That if any person shall falsely make, forge, or counterfeit,

or cause or procure to be falsely made, forged, or counterfeited, or willingly aid or assist in falsely making, forging, or counterfeiting any note in imitation of, or purporting to be, a treasury note aforesaid; or shall falsely alter, or cause, or procure to be falsely altered, or willingly aid or assist in falsely altering any treasury note issued as aforesaid; or shall pass, utter, or publish, or attempt to pass, utter, or publish as true, any false, forged, or counterfeit note, purporting to be a treasury note as aforesaid, knowing the same to be falsely made, forged, or counterfeited; or shall pass, utter, or publish, or attempt to pass, utter, or publish as true, any falsely altered treasury note issued as aforesaid, knowing the same to be falsely altered, every such person shall be deemed and adjudged guilty of felony, and being thereof convicted, by due course of law, shall be sentenced to be imprisoned and kept to hard labour for a period not less than three years, nor more than ten years, and be fined in a sum not exceeding five thousand dollars.

Act of March 4, 1814, c. 18, Sec. 12, 3 Stat. 100, 102:

And be it further enacted, That if any person shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged or counterfeited, or willingly aid or assist in falsely making, forging, or counterfeiting any note, in imitation of, or purporting to be, a treasury note as aforesaid; or shall falsely alter, or cause or procure to be falsely altered, or willingly aid or assist in falsely altering any treasury note, issued as aforesaid; or shall pass, utter, or publish, or attempt to pass, utter, or publish as true, any false, forged, or counterfeited note, purporting to be a treasury note as aforesaid,

knowing the same to be falsely made, forged, or counterfeited; or shall pass, utter, or publish, or attempt to pass, utter, or publish as true, any falsely altered treasury note, issued as aforesaid, knowing the same to be falsely altered, every such person shall be deemed and adjudged guilty of felony, and being thereof convicted by due course of law, shall be sentenced to be imprisoned and kept to hard labour for a period not less than three years, nor more than ten years, and be fined in a sum not exceeding five thousand dollars.

Act of December 26, 1814, c. 17, Sec. 6, 3 Stat. 161, 162, 163:

And be it further enacted, That if any person shall with intent to injure or defraud the United States, or any person or corporation, falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, or willingly aid or assist in falsely making, forging, or counterfeiting any note, in imitation of, or purporting to be, a treasury note, or shall falsely alter, or cause or procure to be falsely altered, or wilfully aid or assist in falsely altering any treasury note issued by virtue of this act, or shall pass, utter, or publish, or attempt to pass, utter, or publish, as true, any false, forged, or counterfeited note, purporting to be a treasury note as aforesaid, knowing the same to be falsely made, forged, or counterfeited; or shall pass, utter, or publish, or attempt to pass, utter, or publish, as true, any falsely altered treasury note, issued as aforesaid, knowing the same to be falsely altered, every such person shall be deemed and adjudged guilty of felony, and being thereof convicted by due course of law, shall be sentenced to be imprisoned for a period not less

than three years, nor more than ten years, or imprisoned and kept to hard labor for a period not less than three years, nor more than ten years; and in either case be fined in a sum not exceeding five thousand dollars.

Act of February 24, 1815, c. 56, Sec. 11, 3 Stat. 213, 215, 216:

> *And be it further enacted,* That if any person shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged or counterfeited, or willingly aid or assist in falsely making, forging or counterfeiting any note, in imitation of, or purporting to be, a treasury note as aforesaid; or shall falsely alter, or cause or procure to be falsely altered, or willingly aid or assist in falsely altering any treasury note issued as aforesaid; or shall pass, utter, or publish, or attempt to pass, utter, or publish, as true, any false, forged, or counterfeited note, purporting to be a treasury note as aforesaid, knowing the same to be falsely made, forged, or counterfeited; or shall pass, utter, or publish, or attempt to pass, utter, or publish, as true, any falsely altered treasury note issued as aforesaid, knowing the same to be falsely altered, or shall be, directly or indirectly, knowingly concerned in any of the offences aforesaid, every such person shall be deemed and adjudged guilty of felony; and being thereof convicted by due course of law, shall be sentenced to be imprisoned and kept to hard labour, for a period not less than three years, nor more than ten years, and be fined in a sum not exceeding five thousand dollars.

Act of October 12, 1837, c. 2, Secs. 10, 11, 5 Stat. 201, 203:

SEC. 10. *And be it further enacted,* That if any person shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, or willingly aid or assist in falsely making, forging, or counterfeiting, any note, in imitation of, or purporting to be, a treasury note aforesaid; or shall falsely alter, or cause or procure to be falsely altered, or willingly aid or assist in falsely altering any treasury note issued as aforesaid; or shall pass, utter, or publish, or attempt to pass, utter, or publish, as true, any false, forged, or counterfeited note, purporting to be a treasury note as aforesaid, knowing the same to be falsely forged or counterfeited, or shall pass, utter, or publish, or attempt to pass, utter, or publish, as true, any falsely altered treasury note, issued as aforesaid, knowing the same to be falsely altered, every such person shall be deemed and adjudged guilty of felony, and being thereof convicted by due course of law, shall be sentenced to be imprisoned, and kept at hard labour, for a period not less than three years, nor more than ten years, and be fined in a sum not exceeding five thousand dollars.

SEC. 11. *And be it further enacted,* That if any person shall make or engrave, or cause or procure to be made or engraved, or shall have in his custody or possession any metallic plate, engraved after the similitude of any plate from which any notes issued as aforesaid shall have been printed, with intent to use such plate, or to cause or suffer the same to be used in forging or counterfeiting any of the notes issued as aforesaid; or shall have in his custody or possession any blank note or notes engraved and printed after the similitude of any notes issued as aforesaid, with intent to use such

blanks, or cause or suffer the same to be used in forging or counterfeiting any of the notes issued as aforesaid; *or shall have in his custody or possession any paper adapted to the making of notes, and similar to the paper upon which any such notes shall have been issued, with intent to use such paper, or cause or suffer the same to be used, in forging or counterfeiting any of the notes issued as aforesaid;* every such person, being thereof convicted by due course of law, shall be sentenced to be imprisoned, and kept to hard labour, for a term not less than three nor more than ten years, and be fined in a sum not exceeding five thousand dollars. [Italics ours.]

Act of January 28, 1847, c. 5, Secs. 9, 10, 9 Stat. 118, 120:

SEC. 9. *And be it further enacted,* That if any person shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, or willingly aid or assist in falsely making, forging, or counterfeiting, any note in imitation of, or purporting to be, a treasury note aforesaid, or shall falsely alter, or cause or procure to be falsely altered, or willingly aid or assist in falsely altering, any treasury note issued as aforesaid, or shall pass, utter, or publish, or attempt to pass, utter, or publish as true, any false, forged, or counterfeited note, purporting to be a treasury note as aforesaid, knowing the same to be falsely forged or counterfeited, or shall pass, utter, or publish as true, any falsely altered treasury note issued as aforesaid, knowing the same to be falsely altered, every such person shall be deemed and adjudged guilty of felony, and being thereof convicted, by due course of law, shall be sentenced to be imprisoned and

kept to hard labor for a period not less than three years nor more than ten years, and to be fined in a sum not exceeding five thousand dollars.

SEC. 10. *And be it further enacted,* That if any person shall make or engrave, or cause or procure to be made or engraved, or shall have in his custody or possession any metallic plate engraved after the similitude of any plate from which any notes issued as aforesaid shall have been printed, with intent to use such plate, or cause or suffer the same to be used in forging or counterfeiting any of the notes issued as aforesaid, or shall have in his custody or possession any blank note or notes engraved and printed after the similitude of any notes issued as aforesaid, with intent to use such blanks, or cause or suffer the same to be used in forging or counterfeiting any of the notes issued as aforesaid, *or shall have in his custody or possession any paper adapted to the making of notes and similar to the paper upon which any such notes shall have been issued, with intent to use such paper or cause or suffer the same to be used in forging or counterfeiting any of the notes issued as aforesaid,* every such person being thereof convicted by due course of law, shall be sentenced to be imprisoned, and kept to hard labor, for a term not less than three nor more than ten years, and fined in a sum not exceeding five thousand dollars. [Italics ours.]

Act of December 23, 1857, c. 1. Secs. 12, 13, 11 Stat. 257, 259:

SEC. 12. *And be it further enacted,* That if any person shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, or willingly aid or assist in falsely making, forging, or

counterfeiting, any note in imitation of or purporting to be a treasury note, issued as aforesaid, or shall pass, utter, or publish, or attempt to pass, utter, or publish, as true, any false, forged, or counterfeited note, purporting to be a treasury note as aforesaid, knowing the same to be falsely made, forged, or counterfeited, or shall falsely alter, or cause or procure to be falsely altered, or willingly aid or assist in falsely altering any treasury note issued as aforesaid, or shall pass, utter, or publish, or attempt to pass, utter, or publish as true, any falsely altered treasury note, issued as aforesaid, knowing the same to be falsely altered, every such person shall be deemed and adjudged guilty of felony; and being thereof convicted by due course of law, shall be sentenced to be imprisoned and kept at hard labor for a period not less than three years nor more than ten years, and to be fined in a sum not exceeding five thousand dollars.

SEC. 13. *And be it further enacted,* That if any person shall make or engrave, or cause or procure to be made or engraved, or shall have in his custody and possession any metallic plate engraved after the similitude of any plate from which any notes issued as aforesaid shall have been printed, with intent to use such plate, or cause or suffer the same to be used in forging or counterfeiting any of the notes issued as aforesaid, or shall have in his custody or possession any blank note or notes engraved and printed after the similitude of any notes issued as aforesaid, with intent to use such blanks, or cause or suffer the same to be used in forging or counterfeiting any of the notes issued as aforesaid, *or shall have in his custody or possession any paper adapted to the making of such notes, and similar to the paper upon*

which any such notes shall have been issued, with intent to use such paper, or cause or suffer the same to be used, in forging or counterfeiting any of the notes issued as aforesaid, every such person being thereof convicted by due course of law, shall be sentenced to be imprisoned and kept at hard labor for a term not less than three nor more than ten years, and fined in a sum not exceeding five thousand dollars. [Italics ours.]

Act of February 25, 1862, c. 33, Secs. 6, 7, 12 Stat. 345, 347, 348:

SEC. 6. *And be it further enacted,* That if any person or persons shall falsely make, forge, counterfeit, or alter, or cause or procure to be falsely made, forged, counterfeited, or altered, or shall willingly aid or assist in falsely making, forging, counterfeiting, or altering, any note, bond, coupon, or other security issued under the authority of this act, or heretofore issued under acts to authorize the issue of treasury notes or bonds; or shall pass, utter, publish, or sell, or attempt to pass, utter, publish, or sell, or bring into the United States from any foreign place with intent to pass, utter, publish, or sell, or shall have or keep in possession or conceal, with intent to utter, publish, or sell, any such false, forged, counterfeited, or altered note, bond, coupon, or other security, with intent to defraud any body corporate or politic, or any other person or persons whatsoever, every person so offending shall be deemed guilty of felony, and shall, on conviction thereof, be punished by fine not exceeding five thousand dollars, and by imprisonment and confinement to hard labor not exceeding fifteen years, according to the aggravation of the offense.

SEC. 7. *And be it further enacted,* That if any person, having the custody of any plate or plates from which any notes, bonds, coupons, or other securities mentioned in this act, or any part thereof, shall have been printed, or which shall have been prepared for the purpose of printing any such notes, bonds, coupons, or other securities, or any part thereof, shall use such plate or plates, or knowingly permit the same to be used for the purpose of printing any notes, bonds, coupons, or other securities, or any part thereof, except such as shall be printed for the use of the United States by order of the proper officer thereof; or if any person shall engrave, or cause or procure to be engraved, or shall aid in engraving, any plate or plates in the likeness or similitude of any plate or plates designed for the printing of any such notes, bonds, coupons, or other securities, or any part thereof, or shall vend or sell any such plate or plates, or shall bring into the United States from any foreign place any such plate or plates, with any other intent or for any purpose, in either case, than that such plate or plates shall be used for printing of such notes, bonds, coupons, or other securities, or some part or parts thereof, for the use of the United States, or shall have in his custody or possession any metallic plate engraved after the similitude of any plate from which any such notes, bonds, coupons, or other securities, or any part or parts thereof, shall have been printed, with intent to use such plate or plates, or cause or suffer the same to be used, in forging or counterfeiting any such notes, bonds, coupons, or other securities, or any part or parts thereof, issued as aforesaid, or shall have in his custody or possession any blank note or notes, bond or bonds, coupon or cou-

pons, or other security or securities, engraved and printed after the similitude of any notes, bonds, coupons, or other securities, issued as aforesaid, with intent to sell or otherwise use the same; or if any person shall print, photograph, or in any other manner execute or cause to be printed, photographed, or in any manner executed, or shall aid in printing, photographing, or executing any engraving, photograph, or other print, or impression, in the likeness or similitude of any such notes, bonds, coupons, or other securities, or any part or parts thereof, except for the use of the United States and by order of the proper officer thereof, or shall vend or sell any such engraving, photograph, print, or other impression, except to the United States, or shall bring into the United States from any foreign place any such engraving, photograph, print, or other impression for the purpose of vending or selling the same, except by the direction of some proper officer of the United States, *or shall have in his custody or possession any paper adapted to the making of such notes, bonds, coupons, or other securities, and similar to the paper upon which any such notes, bonds, coupons, or other securities shall have been issued, with intent to use such paper, or cause or suffer the same to be used, in forging or counterfeiting any of the notes, bonds, coupons, or other securities, issued as aforesaid,* every such person so offending shall be deemed guilty of a felony, and shall, on conviction thereof, be punished by fine not exceeding five thousand dollars, and by imprisonment and confinement to hard labor not exceeding fifteen years, according to the aggregation of the offence. [Italics ours.]

Act of June 30, 1864, c. 172, Secs. 10, 11, 12, 13 Stat 218, 221, 222:

SEC. 10. *And be it further enacted,* That if any person or persons shall falsely make, forge, counterfeit, or alter, or cause or procure to be falsely made, forged, counterfeited, or altered, any obligation or security of the United States, or shall pass, utter, publish, or sell, or attempt to pass, utter, publish, or sell, or shall bring into the United States from any foreign place with intent to pass, utter, publish, or sell, or shall have or keep in possession, or conceal, with intent to utter, publish, or sell, any such false, forged, counterfeited, or altered obligation, or other security, with intent to deceive or defraud, or shall knowingly aid or assist in any of the acts aforesaid, every person so offending shall be deemed guilty of felony, and shall, on conviction thereof, be punished by fine not exceeding five thousand dollars, and by imprisonment and confinement at hard labor not exceeding fifteen years, according to the aggravation of the offense.

SEC. 11. *And be it further enacted,* That if any person having control, custody, or possession of any plate or plates from which any obligation or other security, or any part thereof, shall have been printed, or which may have been prepared by direction from the Secretary of the Treasury, for the purpose of printing any such obligation or other security, or any part thereof, shall use such plate or plates, or knowingly suffer the same to be used for the purpose of printing any such or similar obligation, or other security, or any part thereof, except such as shall be printed for the use of the United States, by order of the proper officer thereof; or if any person shall engrave, or cause or procure to be engraved, or shall aid or assist in engrav-

ing any plate or plates in the likeness or similitude of any plate or plates designed for the printing of any such obligation or other security, or any part thereof, or shall vend or sell any such plate or plates, or shall bring into the United States from any foreign place any such plate or plates, except under the direction of the Secretary of the Treasury or other proper officer, or with any other intent, or for any other purpose, in either case, than that such plate or plates shall be used for the printing of such notes, bonds, coupons, or other obligations or securities, or some part or parts thereof, for the use of the United States, or shall have in his control, custody, or possession; any metallic plate engraved after the similitude of any plate from which any such obligation or other security, or any part or parts thereof, shall have been printed, with intent to use such plate or plates, or cause or suffer the same to be used in forging or counterfeiting any such obligation or other security, or any part or parts thereof, or shall have in his custody or possession, except under authority from the Secretary of the Treasury, or other proper officer, any obligation or other security, engraved and printed after the similitude of any obligation or other security issued under the authority of the United States, with intent to sell or otherwise use the same; or if any person shall print, photograph, or in any other manner make or execute, or cause to be printed, photographed, or in any manner made or executed, or shall aid in printing, photographing, making, or executing any engraving, photograph, or other print or impression in the likeness or similitude of any obligation or other security, or any part or parts thereof, or shall vend or sell any such engraving, photograph, print, or other impression, except to the

United States, or shall bring into the United States from any foreign place any such engraving, photograph, print, or other impression, except by the direction of some proper officer of the United States, *or shall have or retain in his custody or possession, after a distinctive paper shall have been adopted by the Secretary of the Treasury for obligations and other securities of the United States, any similar paper adapted to the making of any such obligation or other security, except under authority of the Secretary of the Treasury, or some other proper officer of the United States,* every person so offending shall be deemed guilty of a felony, and shall, on conviction thereof, be punished by fine not exceeding five thousand dollars, or by imprisonment and confinement at hard labor, not exceeding fifteen years, or by both, in the discretion of the court. [Italics ours.]

SEC. 12. *And be it further enacted,* That if any person shall have or retain in his or her custody, possession, or control, without the written authority or warrant of the Secretary of the Treasury, or of the comptroller of the currency, approved by the Secretary of the Treasury, any engraved or transferred plate, block, or electrotype, or any die, roll, or other original work used in making or preparing any plate, block, or electrotype, or any plate, block, or electrotype prepared or made after the similitude of any plate, block, or electrotype, from which any obligation or other security authorized to be issued by any act of congress, or any part thereof, has been, or may hereafter be, printed, or shall use, or cause, or knowingly suffer, the same to be used, in forging or counterfeiting any such obligation or other security, or shall print, or cause to be printed, any bronzed or gilt letters or de-

vices, or shall print, or cause to be printed, any letters, figures, or devices with green ink, or any green color or pigment, upon any note, bond, or other representative of value, intended or adapted to be used as a currency or a circulating medium, every such person, being thereof convicted by due course of law, shall be deemed guilty of felony, and shall be imprisoned and kept at hard labor for a term not more than ten years, and fined in a sum not more than ten thousand dollars: *Provided,* That nothing in this act shall affect any prosecution pending, or any civil or criminal liabilities incurred under any former act: *Provided, further,* That the foregoing provisions of this section shall not be held or construed to deprive any person of the right to retain in his custody and possession and use for any lawful purpose, any engraved or transferred plate, block, or electrotype, or any die, roll, or other original work as aforesaid, which has been used by him in printing or engraving bank-notes or other obligations, before being used in printing any obligation or other security authorized to be issued by any act of congress; nor shall any of said foregoing provisions be held or construed to prohibit or restrain the lawful use by any person of any ink, color, or pigment, the exclusive right to which has been secured to any such person by letters-patent which are still in force.

Act of March 4, 1909 [Criminal Code], c. 321, Secs. 148, 149, 150, 151, 152, 153, 154, 155. 35 Stat. 1088, 1115–1117.

SEC. 148. Whoever, with intent to defraud, shall falsely make, forge, counterfeit, or alter any obligation or other security of the United States shall be fined not more

than five thousand dollars and imprisoned not more than fifteen years.

SEC. 149. Whoever shall falsely make, forge, or counterfeit, or cause or procure to be made, forged, or counterfeited, or shall willingly aid or assist in falsely making, forging, or counterfeiting, any note in imitation of, or purporting to be in imitation of, the circulating notes issued by any banking association now or hereafter authorized and acting under the laws of the United States; or whoever shall pass, utter, or publish, or attempt to pass, utter, or publish, any false, forged, or counterfeited note, purporting to be issued by any such association doing a banking business, knowing the same to be falsely made, forged, or counterfeited; or whoever shall falsely alter, or cause or procure to be falsely altered, or shall willingly aid or assist in falsely altering, any such circulating notes, or shall pass, utter, or publish, or attempt to pass, utter, or publish as true, any falsely altered or spurious circulating note issued, or purporting to have been issued, by any such banking association, knowing the same to be falsely altered or spurious, shall be fined not more than one thousand dollars and imprisoned not more than fifteen years.

SEC. 150. Whoever, having control, custody, or possession of any plate, stone, or other thing, or any part thereof, from which has been printed, or which may be prepared by direction of the Secretary of the Treasury for the purpose of printing, any obligation or other security of the United States, shall use such plate, stone, or other thing, or any part thereof, or knowingly suffer the same to be used for the purpose of printing any such or similar obligation or other security, or any part thereof, except as may be printed

for the use of the United States by order of the proper officer thereof; or whosoever by any way, art, or means shall make or execute, or cause or procure to be made or executed, or shall assist in making or executing any plate, stone, or other thing in the likeness of any plate designated for the printing of such obligation or other security; or whoever shall sell any such plate, stone, or other thing, or bring into the United States or any place subject to the jurisdiction thereof, from any foreign place, any such plate, stone, or other thing, except under the direction of the Secretary of the Treasury or other proper officer, or with any other intent, in either case, then that such plate, stone, or other thing be used for the printing of the obligations or other securities of the United States; or whoever shall have in his control, custody, or possession any plate, stone, or other thing in any manner made after or in the similitude of any plate, stone, or other thing, from which any such obligation or other security has been printed, with intent to use such plate, stone, or other thing, or to suffer the same to be used in forging or counterfeiting any such obligation or other security, or any part thereof; or whoever shall have in his possession or custody, except under authority from the Secretary of the Treasury or other proper officer, any obligation or other security made or executed, in whole or in part, after the similitude of any obligation or other security issued under the authority of the United States, with intent to sell or otherwise use the same; or whoever shall print, photograph, or in any other manner make or execute, or cause to be printed, photographed, made, or executed, or shall aid in printing, photographing, making, or executing any

engraving, photograph, print, or impression in the likeness of any such obligation or other security, or any part thereof, or shall sell any such engraving, photograph, print, or impression, except to the United States, or shall bring into the United States or any place subject to the jurisdiction thereof, from any foreign place any such engraving, photograph, print, or impression, except by direction of some proper officer of the United States; *or whoever shall have or retain in his control or possession, after a distinctive paper has been adopted by the Secretary of the Treasury for the obligations and other securities of the United States, any similar paper adapted to the making of any such obligation or other security, except under the authority of the Secretary of the Treasury or some other proper officer of the United States,* shall be fined not more than five thousand dollars, or imprisoned not more than fifteen years, or both. (Italics ours.)

SEC. 151. Whoever, with intent to defraud, shall pass, utter, publish, or sell, or attempt to pass, utter, publish, or sell, or shall bring into the United States or any place subject to the jurisdiction thereof, with intent to pass, publish, utter, or sell, or shall keep in possession or conceal with like intent, any falsely made, forged, counterfeited, or altered obligation or other security of the United States, shall be fined not more than five thousand dollars and imprisoned not more than fifteen years.

SEC. 152. Whoever, without authority from the United States, shall take, procure, or make, upon lead, foil, wax, plaster, paper, or any other substance or material, an impression, stamp, or imprint of, from, or by the use of any bedplate, bedpiece, die, roll,

plate, seal, type, or other tool, implement, instrument, or thing used or fitted or intended to be used in printing, stamping, or impressing, or in making other tools, implements, instruments, or things to be used or fitted or intended to be used in printing, stamping, or impressing any kind or description of obligation or other security of the United States, now authorized or hereafter to be authorized by the United States, or circulating note or evidence of debt of any banking association under the laws thereof, shall be fined not more than five thousand dollars, or imprisoned not more than ten years, or both.

SEC. 153. Whoever, with intent to defraud, shall have in his possession, keeping, custody, or control, without authority from the United States, any imprint, stamp, or impression, taken or made upon any substance or material whatsoever, of any tool, implement, instrument, or thing, used, or fitted or intended to be used, for any of the purposes mentioned in the preceding section; or whoever, with intent to defraud, shall sell, give, or deliver any such imprint, stamp, or impression to any other person, shall be fined not more than five thousand dollars, or imprisoned not more than ten years, or both.

SEC. 154. Whoever shall buy, sell, exchange, transfer, receive, or deliver any false, forged, counterfeited, or altered obligation or other security of the United States, or circulating note of any banking association organized or acting under the laws thereof, which has been or may hereafter be issued by virtue of any Act of Congress, with the intent that the same be passed, published, or used as true and genuine, shall be fined not more than five thou-

sand dollars, or imprisoned not more than ten years, or both.

SEC. 155. Whoever, without authority from the United States, shall secrete within, embezzle, or take and carry away from any building, room, office, apartment, vault, safe, or other place where the same is kept, used, employed, placed, lodged, or deposited by authority of the United States, any bedpiece, bedplate, roll, plate, die, seal, type, or other tool, implement, or thing used or fitted to be used in stamping or printing, or in making some other tool or implement used or fitted to be used in stamping or printing, any kind or description of bond, bill, note, certificate, coupon, postage stamp, revenue stamp, fractional currency note, or other paper, instrument, obligation, device, or document, now or hereafter authorized by law to be printed, stamped, sealed, prepared, issued, uttered, or put in circulation on behalf of the United States; or whoever, without such paper, parchment, or other material prepared and intended to be used in the making of any such papers, instruments, obligations, devices, or documents; or whoever, without such authority, shall so secrete, embezzle, or take and carry away any paper, parchment, or other material printed or stamped, in whole or part, and intended to be prepared, issued, or put in circulation on behalf of the United States as one of the papers, instruments, or obligations hereinbefore named, or printed or stamped, in whole or part, in the similitude of any such paper, instrument, or obligation, whether intended to issue or put the same in circulation or not, shall be fined not more than five thousand dollars, or imprisoned not more than ten years, or both.

U. S. GOVERNMENT PRINTING OFFICE: 1937

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In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 146

THE UNITED STATES OF AMERICA, PETITIONER

v.

RALPH RAYNOR

No. 147

THE UNITED STATES OF AMERICA, PETITIONER

v.

CHETT FOWLER

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

No opinion was rendered by the trial court. Its charge to the jury appears at R. 72–80. The opinion of the Circuit Court of Appeals (R. 105–111, 117–122) is reported in 89 F. (2d) 469.

JURISDICTION

The judgments of the Circuit Court of Appeals were entered March 23, 1937 (R. 111, 122). A petition for rehearing was denied May 11, 1937 (R. 112, 123). The petition for writs of certiorari

was filed June 15, 1937, and granted October 11, 1937 (R. 125). The jurisdiction of this Court is conferred by Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925. See also Rule XI of the Rules of Practice and Procedure in Criminal Cases, promulgated by this Court May 7, 1934.

QUESTION PRESENTED

Whether the provisions of Section 150 of the Criminal Code, under which the respondents were convicted, relate only to genuine Government paper or paper which the Government would use in the printing of its own obligations and securities.

STATUTE INVOLVED

Section 150 of the Criminal Code (U. S. C., Title 18, Section 264), so far as pertinent, provides:

> * * * whoever shall have or retain in his control or possession, after a distinctive paper has been adopted by the Secretary of the Treasury for the obligations and other securities of the United States, any similar paper adapted to the making of any such obligation or other security, except under the authority of the Secretary of the Treasury or some other proper officer of the United States, shall be fined not more than $5,000, or imprisoned not more than fifteen years, or both.[1]

[1] The section as a whole is printed in the Appendix at pp. 57–59.

STATEMENT

The respondents were convicted in the District Court of the United States for the Southern District of Indiana under the second count of an indictment charging that they "on or about the 9th day of October, 1936, after a distinctive paper had been adopted by the Secretary of the Treasury of the United States for the obligations and other securities of the United States, did then and there unlawfully, wilfully, knowingly, and feloniously have in their possession * * * similar paper adapted to the making of such obligations and other securities, without the authority of the Secretary of the Treasury or any other proper officer of the United States" (R. 3, 7).

A motion for new trials was overruled (R. 10). Respondent Raynor received a sentence of four years imprisonment and respondent Fowler a sentence of two years imprisonment (R. 10). On appeal, the Circuit Court of Appeals for the Seventh Circuit reversed the judgments of the District Court and remanded the causes, one judge dissenting (R. 105–111, 117–123). Thereafter a petition by the Government for rehearing was denied (R. 112, 123).

There was testimony which, if believed by the jury, established the following facts:

In 1928 the Secretary of the Treasury adopted a distinctive paper for the printing of Government obligations and securities. This paper is manu-

factured by a private concern on annual contract with the Government. As soon as it comes off the machine, it is placed under guard, cut to the size specified by the Government, put in sealed wooden cases, transferred to freight cars, which are also sealed, and delivered to the Paper Custodian at the Treasury Department in Washington. The process of transfer is all made under guard. Neither before nor after the distinctive paper is delivered to the Bureau of Engraving and Printing at Washington does the Secretary of the Treasury allow any of this paper to be distributed to private individuals. No one is permitted to have this paper in this country except the Government. A sample of this distinctive paper was introduced as Government's Exhibit 28. (R. 52, 53.)

Government's Exhibit 3 is the paper found in the possession and control of the respondents and upon which the second count of the indictment was predicated (R. 22, 30, 32). Both Exhibits 3 and 28 are high grade rag bond paper (R. 31, 53, 70), of approximately the same thickness, gloss, opacity and rattle (R. 53), with color nearly matching (R. 69), of practically the same weight (R. 49, 70), with a similar feel and crackle (R. 31), with about the same toughness and tearing resistance (R. 56), and with the same crinkle (R. 48).

Impregnated and distributed throughout Exhibit 28 are short fine red and blue silk fibers in the form of curls (R. 47), which are visible to the

naked eye (R. 32, 53). Without careful examination they resemble red and blue lines (R. 53). In Exhibit 3 the red and blue curls which resemble the impregnated short fine silk fibers of Exhibit 28 are merely surface markings (R. 32, 51, 64). But these surface markings, to the naked eye, are similar to and approximate the appearance of red and blue silk fibers (R. 47, 48, 54), although apparently not as plentiful (R. 70).

Exhibit 3 was cut to the size of the genuine United States currency (R. 30, 31). A defense witness testified that the average man could probably not distinguish Exhibit 3 from Exhibit 28 (R. 70).

A Government witness, a chemist and paper analyst, testified that, from his experience since he had been with the Treasury Department analyzing paper, he was of the opinion that Exhibit 3 was such a paper that if it were taken to the Bureau of Engraving and Printing in Washington and there printed into a twenty dollar Treasury note, it would pass as currency in the general trade of the country (R. 54).

It is evident also that the respondent Raynor thought that Exhibit 3 would pass as Government paper for he told one Government witness that he and his co-respondent had "official Government paper" (R. 16). To another Government witness he stated that the paper was "genuine Government paper" (R. 22, 25, 32), and that if the witness

would "let the light reflect off of it, and then you will see the red and blue lines which are a distinguishing feature of genuine Government paper" (R. 23).

Both Exhibits 3 and 28 were exhibited to the jury for comparison (R. 62).[2]

Respondents contended in the District Court that the only paper which came within the purview of the provisions of the statute under which they were convicted was paper which was "exactly like" the distinctive paper adopted by the Government (R. 79).[3]

As is evident from its charge to the jury, the District Court took the position, in accordance with the Government's contention, that the statute does not require that the paper must be "identical" with that adopted by the Government, that it was not necessary that the paper contain threads in it but only that it be similar to the distinctive Government paper, and that "It might be similar and have

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[2] Government's Exhibit 28 does not appear among those exhibits certified by the Clerk of the Circuit Court of Appeals to this Court because the Government chemist who produced it when called as a Government witness was allowed to take the paper with him when he returned to Washington (R. 62).

[3] As appears from the respondents' assignment of errors below (R. 89–92), the question of the construction of the statute was apparently raised in the trial court by exceptions to certain testimony (R. 61), to the refusal of the trial judge to direct a verdict in favor of the respondents (R. 62), and to certain portions of the charge to the jury (R. 75).

markings on it which would lead one to believe that it is the genuine paper as adopted by the Secretary of the Treasury" (R. 76–77).

On appeal the Circuit Court of Appeals for the Seventh Circuit, one judge dissenting, reversed the judgments of conviction. It held (R. 105–110)[4] that the paper in the possession of the respondents was not covered by the statute because it was not "adapted to the making of genuine obligations" of the United States, since it did not contain red and blue silk fibers, a feature of the distinctive Government paper. In reaching this conclusion the court stated that Congress was "striking at the evil of someone unlawfully coming into possession of the genuine government paper" (R. 108). The dissenting judge in the Circuit Court of Appeals was of the opinion, however, that the construction given the statute by the majority was strained and did violence to the intent of Congress. Interpreting the provisions in question in the light of the remaining provisions of Section 150 of the Criminal Code, the dissenting judge stated that the "legislative body, manifestly, was dealing with the possession of articles capable of use in counterfeiting obligations of the United States which might deceive the ordinary citizen to whom such counter-

[4] The opinion of the Circuit Court of Appeals is printed at two places in the Record—R. 105–111 and R. 117–122. Whenever we hereafter refer to that opinion our reference is to the opinion as printed at R. 105–111.

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feits might come," and that, consequently, he was of the view that the "forbidden article was meant to include all fabrications of such similitude to official paper as, when used, might easily deceive, not the expert, but every day business men or other citizens amongst whom the criminal hopes to circulate counterfeits" (R. 110–111).

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals for the Seventh Circuit erred:

(1) In construing the provisions of the statute under which the respondents were convicted as relating only to genuine Government paper or paper which the Government would use in the printing of its own obligations and securities.

(2) In holding that the statute did not apply to any paper not impregnated with red and blue silk fibers, however similar in appearance this paper might be to the genuine Government paper.

(3) In reversing the judgments of the District Court of the United States for the Southern District of Indiana.

SUMMARY OF ARGUMENT

It is the position of the Government that the statutory provisions under which the respondents were convicted are broad enough to include any paper which, by reason of its characteristics, so resembles the distinctive Government paper that an ordinary individual would, because of such resemblance, be led to believe that a counterfeit

made upon such paper is a genuine obligation or security of the United States. The court below, however, held that the instant provisions covered solely the distinctive Government paper, i. e., the distinctive paper upon which the Government would print its genuine and valid obligations and securities.

The court below in reaching its holding not only disregarded the ordinary meaning and significance of the word "similar" as "having a more or less marked resemblance", but it treated it as stricken because of its interpretation of the modifying phrase "adapted to the making of any such obligation or other security." The court also attempted to fortify its conclusion by reference to the words "except under authority of the Secretary of the Treasury or some other proper officer of the United States," declaring that "No one would have occasion to request or receive authority from such public officials to possess any paper unless it were the genuine paper of the government."

The Government, however, submits that the word "similar" must be given its ordinary meaning and significance; that the modifying phrase "adapted to the making of any such obligation or other security" must be construed in harmony with the context and the end in view; that its legitimate function and its permissible field of operation lies in preventing the word "similar" from being unnecessarily broad and indefinite, and that this phrase so qualifies "similar" as to create a stand-

ard which will guide a jury in determining whether under a given state of facts a paper possesses that degree of similarity to the distinctive Government paper that an ordinary individual would, because of such similarity, be led to believe that a counterfeit made upon such a paper is a genuine obligation of the United States.

The Government further contends that the words "except under authority of the Secretary of the Treasury or some other proper officer of the United States", were inserted for the sole purpose of setting forth the only evidence capable of rebutting the presumption of guilt arising from the bare custody and possession of the prohibited paper and has no bearing upon the reach of the instant provisions. This contention is corroborated by the Congressional intent as revealed by the legislative history. The factors which gave rise to this statutory presumption are developed in the discussion of the legislative history of the instant provisions.

The court below not only disregarded the ordinary meaning of the words found in the statute but also disregarded the Congressional intent as indicated by the legislative history of the instant provisions. It was apparently unaware of this legislative history, in view of the absence of any reference thereto either in the the briefs submitted to it or in its opinion. Nor were there any references to or in the opinion rendered by the legislative history in the briefs submitted to the Circuit Court of Appeals for the Second Circuit in the case of

Krakowski v. *United States*, 161 Fed. 88, followed by the court below.

The legislative history establishes that the instant provisions were designed to combat counterfeiting in its very earliest steps, including the custody and possession of imitations and counterfeits of the distinctive Government paper. This is made manifest by the progressively more inclusive penal provisions, beginning with the Act of 1837 (*infra*, pp. 20–21), and by the express declaration in the Act of 1863 (*infra*, p. 22) that the penal provisions should "extend and apply to all persons who shall imitate, counterfeit, make, or sell any paper such as that used, or provided to be used, for the fractional notes." The provisions of the 1863 Act were rephrased more succinctly, but without any intention to narrow their scope, in the Act of 1864 (*infra*, pp. 23–24), which constitutes their present form.

This Act of 1864, passed at a period when for the first time hundreds of millions of dollars of paper money were put into general circulation, also deleted the requirement of *mens rea* and established the statutory presumption to which we have above referred. Shortly thereafter further measures toward the suppression of counterfeiting were taken through increased appropriations and the establishment of the Secret Service Division of the Treasury Department.

The court below, in following the *Krakowski* case, adopted not only the erroneous view that "the primary object of the statute was to prevent per-

sons from having in their possession, without authority, the distinctive government paper", but also apparently the analogy drawn in the *Krakowski* opinion to an English statute which had denounced as a misdemeanor the unauthorized possession of the distinctive English Government paper. Neither the opinion in the *Krakowski* case nor the briefs submitted to that court, however, referred to that provision in the English statute which denounced as a felony the custody and possession of imitations of the distinctive English Government paper, and which, we submit, is more analogous to the instant provisions.

The instant provisions, we contend, like all the other provisions in Section 150 of the Criminal Code, are directed against the making and possession of implements and materials useful in counterfeiting. Since the distinctive Government paper is almost never used in the making of counterfeits, the construction adopted by the court below vitiates the intent of Congress to eradicate counterfeiting.

There is no support for the respondents' contention that there has been an acceptance either by Congress or by the Executive Departments of the construction given the instant provisions in the *Krakowski* decision.

ARGUMENT

THE STATUTORY PROVISIONS INVOLVED ARE BROAD ENOUGH TO INCLUDE ANY PAPER WHICH, BY REASON OF ITS CHARACTERISTICS, SO RESEMBLES THE DISTINCTIVE GOVERNMENT PAPER THAT AN ORDINARY INDIVIDUAL WOULD, BECAUSE OF SUCH RESEMBLANCE, BE LED TO BELIEVE THAT A COUNTERFEIT MADE UPON SUCH PAPER IS A GENUINE OBLIGATION OF THE UNITED STATES, NOTWITHSTANDING THAT SUCH PAPER DOES NOT CONTAIN THE IMPREGNATED RED AND BLUE SILK FIBERS OF THE DISTINCTIVE GOVERNMENT PAPER

Respondents contend that the statutory provisions under which they were convicted were designed to punish only those who possess and control the distinctive Government paper, i. e., the distinctive paper upon which the Government prints its obligations and securities.

The Government contends, on the contrary, that the words in the instant provisions which describe the prohibited paper as "any similar paper adapted to the making of any such obligation or other security" should not be limited solely to the distinctive paper. It is the Government's further contention that the court in so construing these words not only deprived the word "similar" of its ordinary meaning but also proceeded in its reasoning as though the word "similar" had been stricken. The court so declared because of its interpretation of the phrase "adapted to the making of any such obligation or other security" which, we submit, simply modifies "any similar paper."

The opinion recognizes that (R. 107):

> Webster defines the word "similar" to mean "nearly corresponding, resembling in many respects, somewhat like." Winston's simplified dictionary says, "having a more or less marked resemblance or correspondence to one another or to something else, analogous, like but not exactly the same, of the same nature."

While the court acknowledged, therefore, that the word "similar" does not import "exactly alike" (R. 107), it nevertheless held that the only paper falling within the purview of the instant statutory provisions is the distinctive paper which the Government would use in the making of its genuine and valid obligations and securities. It accordingly decided that the paper found in the possession of the respondents was not covered by the instant provisions solely because it did not contain the impregnated red and blue silk fibers, a feature of the distinctive paper, although the opinion concedes that the jury, under the instructions of the trial court, was justified in finding that the paper in question was "similar" to the distinctive Government paper (R. 107).

1. It is apparent (R. 110) that the court's construction of the statutory provisions in question was influenced by the decision of the Circuit Court of Appeals for the Second Circuit in *Krakowski* v. *United States*, 161 Fed. 88. The holding of that

court that the statute prohibits only "the unauthorized possession of government paper" or the unauthorized possession of "paper which could be used for printing government securities" was predicated upon its belief "that the primary object of the statute was to prevent persons from having in their possession, without authority, the distinctive government paper." That court, therefore, was of the view that the statute was designed to accomplish the same purpose as the English statutory provisions to which it referred (24 & 25 Vict., c. 98, § 11).[5] It will be observed, however, that these statutory provisions manifestly covered only the unauthorized purchase, receipt, custody, or possession of the specific paper manufactured for use by the British Government in the printing of its own obligations. It did not purport to cover any

[5] This section provides:

"Whosoever, without lawful Authority or Excuse (the Proof whereof shall lie on the Party accused), shall purchase or receive, or knowingly have in his Custody or Possession, any Paper manufactured and provided by or under the Directions of the Commissioners of Inland Revenue or Commissioners of Her Majesty's Treasury, for the Purpose of being used as Exchequer Bills or Exchequer Bonds or Exchequer Debentures, before such Paper shall have been duly stamped, signed, and issued for Public Use, or any such Plate, Die, or Seal as in the last Two preceding Sections mentioned, shall be guilty of a Misdemeanor, and being convicted thereof shall be liable, at the Discretion of the Court, to be imprisoned for any Term not exceeding Three Years, with or without Hard Labour."

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paper "similar" to the British Government paper. Indeed, "similar" paper was covered by another section of the same statute (24 & 25 Vict., c. 98, §10).[6] The unauthorized possession of an imitation of the British Government paper was made a felony, whereas the unauthorized possession of the British Government paper was declared to be merely a misdemeanor.

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[6] This section provides:

"Whosoever, without lawful Authority or Excuse (the Proof whereof shall lie on the Party accused), shall make, or cause or procure to be made, or aid or assist in making, any Paper in the Substance of which shall appear any Words, Letters, Figures, Marks, Lines, Threads, or other Devices peculiar to and appearing in the Substance of any Paper provided or to be provided or used for such Exchequer Bills, Bonds, or Debentures, or any Part of such Words, Letters, Figures, Marks, Lines, Threads, or other Devices, and intended to imitate the same, or shall knowingly have in his Custody or Possession any Paper whatsoever, in the Substance whereof shall appear any such Words, Letters, Figures, Marks, Lines, Theads, or Devices as aforesaid, or any Parts of such Words, Letters, Figures, Marks, Lines, Threads, or other Devices, and intended to imitate the same, or shall cause or assist in causing any such Words, Letters, Figures, Marks, Lines, Theads, or Devices as aforesaid, or any Part of such Words, Letters, Figures, Marks, Lines, Threads, or other Devices, and intended to imitate the same, to appear in the Substance of any Paper whatever, or shall take or assist in taking any Impression of any such Plate, Die, or Seal as in the last preceding Section mentioned, shall be guilty of Felony, and being convicted thereof shall be liable, at the Discretion of the Court, to be kept in Penal Servitude for any Term not exceeding Seven Years and not less than Three Years,—or to be imprisoned for any Term not exceeding Two Years, with or without Hard Labour, and with or without Solitary Confinement."

Another fundamental error in the *Krakowski* decision lies in the view of the court that if the word "similar" in the statutory provisions involved is given its acknowledged meaning of "having a more or less marked resemblance" there would be excluded from the purview of such provisions the distinctive Government paper itself. But certainly if paper which has a more or less marked resemblance to the distinctive Government paper is included in the ambit of the statute, *a fortiori* the distinctive Government paper would be within its scope.

Moreover, the view expressed by the court below in the instant decision and by the Circuit Court of Appeals for the Second Circuit in the *Krakowski* decision, that the statutory provisions in question were directed solely at the unauthorized possession or control of the distinctive Government paper gives no heed to the legislative history of those provisions, of which those courts were apparently unaware.[7] The divergence of opinion among the various judges who have been called upon in this and the *Krakowski* cases to construe the statutory provisions involved,[8] makes it manifest that those pro-

[7] Neither in the *Krakowski* case nor in the instant case was the legislative history referred to in the briefs submitted to the Circuit Court of Appeals, nor was it alluded to in the opinion of those courts.

[8] In this and the *Krakowski* cases, two district judges and a circuit judge decided in favor of the Government, while one district judge and four circuit judges decided against the Government.

visions require construction, and hence warrants resort to the legislative history thereof, including the enactments progressively embracing the operations commonly incident to the earlier steps in counterfeiting, among which was the imitation and counterfeiting of the paper adopted by the Government for the printing of its obligations. See *United States* v. *Katz*, 271 U. S. 354, 357; *Prussian* v. *United States*, 282 U. S. 675, 678.

2. Resort to the legislative history discloses that Congress sought to bring within the scope of the section in which the provisions in question appear all of the operations incident to counterfeiting, whether such operations occur in the later or the earlier stages of the process. The legislative history also indicates that in reaching the earliest stages of the counterfeiting operation Congress intended not only to prevent the unauthorized control and possession of the distinctive Government paper but also the unauthorized control and possession of imitations and counterfeits of the distinctive paper. When this legislative history is considered in the light of the fact that counterfeit money is almost never made on the distinctive Government paper because it is well nigh impossible to obtain it (R. 52–53), a fact of which it is fair to assume that Congress was cognizant, it follows that the court below gave too narrow a construction to the statutory provisions involved when it restricted them solely to the distinctive Government paper.

The first Federal counterfeiting statute was the Act of April 30, 1790 (*infra,* p. 36).[9] It reached only the counterfeiting and uttering of certificates, indents or other public securities of the United States. The Act of June 30, 1812 (*infra,* pp. 36–37), which for the first time authorized the issuance of Treasury notes, also contained penal provisions similarly limited to the final stages of the counterfeiting process, i. e., the actual counterfeiting and uttering of counterfeited Treasury notes. The reach of this legislation was not materially enlarged in the enactments of February 25, 1813, March 4, 1814, December 26, 1814, and February 24, 1815 (*infra,* pp. 37–40). Beginning, however, with the Act of October 12, 1837 (*infra,* pp. 40–42), certain of the earlier steps of the counterfeiting process, such as the engraving and possession of plates and the possession of paper to be used in counterfeiting, were included within the scope of the legislation; and thereafter, by repeated enactments, there resulted such a progressive inclusion of the earlier stages of the counterfeiting operation as to cause a Special Joint Congressional Committee on Revision of Laws, at the time the legislation was incorporated in the Criminal Code as Section 150, to state in its report that:

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[9] This and all subsequent counterfeiting statutes referred to in the discussion of the legislative history are set forth in the Appendix (*infra,* pp. 36–62) in chronological order.

> This section [Criminal Code, Sec. 150; now U. S. C. Title 18, Sec. 264] is broadened so as to embrace every method which may be employed in counterfeiting the obligations of the United States, and its provisions are extended so as to apply in any place under the jurisdiction of the United States.[10]

Viewing the particular statutory provisions here involved in the light of this general background, disclosing the purpose of Congress expressly to penalize all of the steps in the counterfeiting process, it may be pointed out that these provisions had their genesis in Section 11 of the Act of October 12, 1837, *supra,* which, as stated, was the first of the series of enactments by which Congress sought to broaden its prior legislation by including not only the final stages of counterfeiting, but also some of the earlier stages thereof. As these provisions appeared in the Act of 1837 (*infra,* pp. 41–42) they read:

> That if any person * * * shall have in his custody or possession any paper *adapted to the making of* [Treasury] *notes, and similar to the paper upon which any such notes shall have been issued,* with intent to use such paper, or cause or suffer the same to be used, in forging or counterfeiting any of the

[10] Sen. Rep. No. 10, Pt. 1, p. 19, 60th Cong., 1st Sess.: House Rep. No. 2, Pt. 1, p. 19, 60th Cong., 1st Sess.

> notes issued as aforesaid; every such person * * * shall be sentenced * * * for a term not less than three nor more than ten years, and be fined in a sum not exceeding five thousand dollars. [Italics ours.]

It is obvious that in the foregoing provision Congress was striking not only against possession and custody of the precise kind of paper on which the Government printed Treasury notes, but also against possession and control of any "similar" paper. When the underlying purpose of dealing a blow at counterfeiting is kept in mind, it would seem that the only reasonable interpretation which could be given these provisions is that they were meant to discourage the possession of any paper so exhibiting the characteristics of the paper used by the Government in printing Treasury notes as to make it suitable for counterfeits which when placed in general circulation would be accepted as genuine by the average individual.

By the Act of February 25, 1862 (*infra*, pp. 46–49) "bonds, coupons, or other securities" were included within the scope of the penal provisions, together with additional earlier steps in the counterfeiting process.

The conclusion that Congress was seeking to outlaw not only the possession and custody of paper which the Government would use in the printing of its genuine obligations but also the imitations and counterfeits of such paper, is fortified by the

Act of March 3, 1863 (*infra,* pp. 50–51), which, passed during a critical period of the Civil War, for the first time authorized the issuance of fractional currency. This statute, in adopting the penal provisions of the Act of February 25, 1862, relating to "notes, bonds, coupons, or other securities," expressly provided that those provisions should "*extend and apply to all persons who shall imitate, counterfeit, make or sell any paper such as that used, or provided to be used, for the fractional notes.*" [Italics ours.] This provision did not, we submit, constitute an extension of the purview of the early penal provisions. It was intended by Congress as a precautionary measure [11] to insure that those provisions should be construed as prohibiting the imitation and counterfeiting of the paper used in the printing of the millions of dollars of small currency the circulation of which Congress was then authorizing.[12] If, as we believe, this was the purpose of the provision quoted, it constitutes an interpretation by Congress of its own legislation which leaves no doubt that Congress intended that the penal provisions should cover not

[11] This provision originated with the Senate Committee on Finance after Bill No. H. R. 659, 37th Cong., 3d Session, had been printed, twice read and referred to it. The original rider in handwriting attached to the bill by this Committee, which Congress subsequently passed in the identical words, is preserved in the files of the National Archives of the United States.

[12] By the Act of March 3, 1863, in which the provision appears, Congress authorized the issuance of $50,000,000 in fractional currency. (12 Stat. 711.)

only that paper which the Government would use in the printing of its obligations but also imitations and counterfeits of that paper.

The penal provisions employed in the earlier legislation were rephrased in Section 11 of the Act of June 30, 1864, (*infra,* p. 53), so as to read as they now appear in the instant provisions. A comparison of the language employed in the earlier legislation with that of the Act of 1864, however, makes it clear that Congress had no intention of narrowing the scope of the legislation, as interpreted by the Act of 1863, so as to exclude imitations and counterfeits of the distinctive Government paper.

In the earlier legislation the language employed was "any paper adapted to the making of such notes [bonds, coupons, or other securities], and similar to the paper upon which any such notes [bonds, coupons, or other securities] shall have been issued."[13] This provision was simply more conveniently and succinctly expressed in the Act of June 30, 1864, by the employment of the words "any similar paper adapted to the making of any such obligation or security."[14] Such a mere rephrasing

[13] See Acts of October 12, 1837, January 28, 1847, December 23, 1857, December 17, 1860, July 17, 1861, February 25, 1862, July 11, 1862, and March 3, 1863; (*infra*, pp. 40–51).

[14] Section 13 of the Act of 1864 (13 Stat. 222) defined "obligation or other security" as including "all bonds, coupons, national currency, United States notes, treasury notes, fractional notes * * * of whatever denomination, which have been or may be issued under any act of Congress."

of the language of the earlier penal provisions cannot, we submit, be regarded as a restriction or limitation of the scope of the legislation as theretofore announced by Congress itself.

Any view that Congress intended by the Act of 1864 to narrow the scope of the earlier penal provisions fails to take account of the fact that that Act was passed during the Civil War when Congress for the first time authorized the issuance of paper as legal tender or lawful money. (First Legal Tender Act of February 25, 1862, c. 33, 12 Stat. 345.) Prior to the First Legal Tender Act the Treasury Department had in its entire history issued less than $300,000,000 in Treasury notes.[15] These notes were in large denominations and were not in general circulation. However, in a two-year period during the Civil War, Congress authorized the issuance of Government paper in a sum approximating $3,000,000,000, including hundreds of millions of dollars in greenbacks and fractional currency, which were

[15] Act of June 30, 1812, c. 111, 2 Stat. 766, Act of February 25, 1813, c. 27, 2 Stat. 801; Act of March 4, 1814, c. 18, 3 Stat. 100; Act of December 26, 1814, c. 17, 3 Stat. 161; Act of February 24, 1815, c. 56, 3 Stat. 213; Act of October 12, 1837, c. 2, 5 Stat. 201; Act of May 21, 1838, c. 82, 5 Stat. 228; Act of March 2, 1839, c. 37, 5 Stat. 323; Act of March 31, 1840, c. 287, 5 Stat. 581; Act of March 3, 1843, c. 81, 5 Stat. 614; Act of July 22, 1846, c. 56, 9 Stat. 39; Act of January 28, 1847, c. 5, 9 Stat. 118; Act of December 23, 1857, c. 1, 11 Stat. 257; Act of December 17, 1860, c. 1, 12 Stat. 121; Act of July 17, 1861, c. 5, 12 Stat. 259; Act of February 12, 1862, c. 20, 12 Stat. 338; Cf. House of Representatives Report No. 150, p. 8, 43d Cong. 2nd Session.

circulated generally.[16] It is obvious that the issuance of this vast amount of paper obligations and paper money increased the incentive to engage in counterfeiting. As a result of this situation Congress, as early as July 11, 1862 (c. 142, Sec. 5, 12 Stat. 533), authorized, for the purpose of combating the counterfeiting of its paper obligations, the use of a part of an appropriation of $10,000 previously made to apprehend coin counterfeiters. And on July 2, 1864 (c. 210, Sec. 3, 13 Stat. 351), only two days after the passage of the Act of June 30, 1864, which rephrased the penal provisions in the form in which they now appear, Congress appropriated the sum of $100,000 for the purpose of meeting the expenses of detecting persons engaged in counterfeiting treasury notes, bonds and other securities, including greenbacks and fractional currency. To carry out these provisions the Secret Service Division of the Treasury Department was organized in 1865.[17]

In further support of the view that Congress, in rephrasing the penal provisions in the Act of 1864,

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[16] Act of February 25, 1862, c. 33, 12 Stat. 345; Act of March 1, 1862, c. 35, 12 Stat. 352; Act of March 17, 1862, c. 45, 12 Stat. 370; Act of July 11, 1862, c. 142, 12 Stat. 532; Act of March 3, 1863, c. 73, 12 Stat. 709; Act of March 3, 1864, c. 17, 13 Stat. 13; Act of June 30, 1864, c. 172, 13 Stat. 218.

[17] The United States Government (p. 66), by George M. Lamphere, published January 19, 1880, by J. P. Lippincott and Company, Philadelphia, Pennsylvania. Senate Report 307, Part 2, p. 61, 50th Cong. 1st Session.

did not intend to narrow the scope of those provisions, several other changes should be pointed out. All of the penal provisions in prior Acts required that the paper be possessed with the intent that it be used in counterfeiting.[18] The Act of 1864, however, eliminated the requirement of *mens rea* and thus gave the Government another weapon in its effort to eradicate counterfeiting by making prosecutions easier through the removal of the difficulties usually incident to proof of criminal intent (Cf. 50 Harvard Law Review 618). It is also significant that at the time Congress first authorized the issuance of paper to be used as lawful money or legal tender it increased the maximum term of imprisonment which could be imposed for violation of the penal provisions from ten to fifteen years.[19] And about ten years after the passage of the Act of 1864, when the provisions were incorporated into the Revised Statutes as Section 5430 (*infra,* pp. 55–56), the word "control" was substituted for "custody," thus making it possible to include responsible principals who theretofore could not have been reached because they did not have technical custody or possession of the prohibited paper.

It is thus apparent from the legislative history, we believe, that the court below and the Circuit Court of Appeals for the Second Circuit in the

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[18] See Acts of October 12, 1837, January 28, 1847, December 23, 1857, December 17, 1860, July 17, 1861, February 25, 1862, July 11, 1862, and March 3, 1863 (*infra*, pp. 40–51).

[19] Act of February 25, 1862, *infra*, p. 49.

Krakowski case, in holding that the provisions in question were confined to the distinctive Government paper, misapprehended the intent of Congress.

It is also apparent, we submit, that the decisions in the *Krakowski* and the instant cases have so restricted the reach of those provisions, obviously designed to combat counterfeiting in its earliest stages, as to make the provisions practically valueless from such a standpoint. Since counterfeit money is not ordinarily made upon the distinctive Government paper (R. 53), it would follow, if those decisions prevailed, that convictions of counterfeiters would be well nigh impossible unless the evidence disclosed the consummation of some step in the counterfeiting process subsequent to the possession of the prohibited paper. It is fair to assume that Congress was cognizant of the difficulties inherent in the obtaining of the distinctive Government paper for counterfeiting purposes and was likewise cognizant that counterfeiters almost never make their counterfeits on such paper. It is further fair to assume that Congress knew that paper having a close resemblance to the distinctive paper was ordinarily the first prerequisite of a successful counterfeiting operation. If Congress had desired to prohibit only the unauthorized control and possession of the distinctive Government paper it would undoubtedly have used clearer and more direct language to reach that object than

the phrase "any similar paper adapted to the making of any such obligation or other security." We submit that in view of the Congressional intent, as manifested by the legislative history of the instant provisions, the words "any similar paper adapted to the making of any such obligation or other security" should not be construed as restricted to the distinctive Government paper.

3. The construction for which we contend not only accords with the intent of Congress but gives proper meaning to the language employed. The court below reached the conclusion that the word "similar" must be stricken from the phrase "any similar paper adapted to the making of any such obligation or other security." The construction for which we contend, while giving the word "similar" its accepted meaning, does not require any unnatural or forced construction of the language "adapted to the making of any such obligation or other security." On the contrary, this phrase has a legitimate function and permissible operation only if the word "similar" is given its acknowledged meaning and significance, because the phrase thus prevents the word "similar" from being unnecessarily broad and indefinite.

Congress undoubtedly intended to supply this modifying language[20] in order that a standard should be created which would guide a jury in de-

[20] Cf. Murray's New English Dictionary, Vol. 1, p. 101 (1881); The Oxford English Dictionary, Vol. 1, p. 101 (1933); *Commonwealth* v. *Kent*, 47 Mass. 221.

termining whether a paper possesses that degree of similarity to the distinct Government paper that an ordinary individual would, because of such similarity, be led to believe that a counterfeit made upon such paper is a genuine obligation of the United States. Such a standard is analogous to that supplied by the word "similitude" appearing in other counterfeiting provisions of Section 150. In *United States* v. *Fitzgerald,* 91 Fed. 374, 375 (D. Wash.) it was stated of the word "similitude":

> Now, the similitude must be in such a degree as to furnish a resemblance so near to the government obligations or securities that it could be used to deceive a person of ordinary intelligence, who is acting with ordinary care, in a business transaction.[21]

Applying such a standard to paper, other than the distinctive Government paper, covered by the instant provisions, a conviction is warranted only if the jury should find that by reason of its characteristics the paper so resembles the distinctive paper that an ordinary individual would, because of such resemblance, be led to believe that a counterfeit made upon it is a genuine obligation of the United States. Such a test furnishes a practical

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[21] In addition see *Minnella* v. *United States*, 44 F. (2d) 48; *United States* v. *Weber*, 210 Fed. 974, 976 (W. D. Wash.); *United States* v. *Sprague*, 48 Fed. 828, 829 (E. D. Wis.). See also *Greenleaf* v. *Goodrich*, 101 U. S. 278, 283.

standard [22] and brings that standard into harmony with that applied in respect of other provisions of the same section. Moreover, this standard not only does not require any distortion of the provisions in question but enables the Congressional intent, as manifested by the legislative history, to be carried into effect.

The court below, we submit, also misconstrued the purpose of the phrase "except under the authority of the Secretary of the Treasury or some other proper officer of the United States." The court said that this phrase required the conclusion that the provisions in question covered only distinctive Government paper because "No one would have occasion to request or receive authority from such public officials to possess any paper unless it were the genuine paper of the government" (R. 108). As we have heretofore pointed out at p. 26, *supra,* prior to the Act of June 30, 1864, the

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[22] In *Minnella* v. *United States*, 44 F. (2d) 48, 49 (C. C. A. 8th), *supra*, the court, after stating that "such similitude existed if it is calculated to deceive an honest, sensible and unsuspecting man of ordinary observation and care in his dealings with the ordinary citizen with whom he has transactions" said "This is certainly sufficient under the statute if the statute is to have any practical meaning or effect. Any other construction would mean that, unless a counterfeit was perfect, it would not be in similitude. Of course the governmen has taken all the steps which ingenuity and experience could suggest to make it impossible or difficult to exactly simulate its printed money. It is not to be expected that counterfeiters can do their work so perfectly as the government, nor are they required so to do to be punishable under these statutes."

Government was required, in order to secure a conviction, to establish that the prohibited paper was possessed with the intent that it be used in counterfeiting. By the Act of June 30, 1864, Congress, however, deleted the requirement of *mens rea*, causing a presumption of guilt to arise from the bare custody or possession of the prohibited paper. Upon the defendant was placed the burden of explaining or justifying such possession. He, of course, is in a better position than the Government to explain how he came by the paper. An analogous provision is found in the Federal statute prohibiting the unlawful importation and concealment of smoking opium. See *Yee Hem* v. *United States*, 268 U. S. 178. The language upon which the court below relied was inserted in the instant provisions for the purpose of declaring the only evidence capable of rebutting this presumption and has, we submit, no bearing upon the reach of the statutory provisions involved.[23]

4. In view of the improbability of any person possessing the distinctive paper without proper authority and in view of the fact that counterfeits are almost never made on distinctive Government paper, it follows that the purposes underlying the provisions of Section 150 of the Criminal Code require that the instant provisions be construed to

[23] Cf. similar exceptions relative to counterfeits and counterfeiting in Section 172 of the Criminal Code (U. S. C., Title 18, Sec. 286) and in other provisions of Section 150 of the Criminal Code.

include any paper which, by reason of its characteristics, so resembles the distinctive Government paper that an ordinary individual, because of such resemblance, would be led to believe that a counterfeit made upon such paper is a genuine obligation of the United States. The other provisions of Section 150 of the Criminal Code, which prohibit the unauthorized printing from genuine plates, the unauthorized engraving of any print in the likeness of a genuine plate, the unauthorized making of any plate in the similitude of any genuine plate, the unauthorized possession of any paper printed in the similitude of genuine notes and, finally, the unauthorized making or importation of any photograph of a genuine note, are all provisions directed against the making or possession of implements and materials which may be utilized in counterfeiting. Since the distinctive paper is seldom used in making counterfeits, the instant provisions, if the construction of the court below were to prevail, would be practically valueless in combating counterfeiting, and as this was the purpose of these and the other provisions of Section 150, the will of Congress would be vitiated. The holding by the court below, we submit, rejects "that sense of the words which best harmonizes with the context and the end in view." *Gooch* v. *United States,* 297 U. S. 124, 128.

Respondents make the point in their brief in opposition to the petition for writ of certiorari

(pp. 9–11) that there was a Congressional acceptance of the construction given the penal provisions in question by the Circuit Court of Appeals for the Second Circuit in the *Krakowski* decision, rendered on March 10, 1908, because of the inclusion of those provisions, without change, in both Section 150 of the Criminal Code, approved March 4, 1909, and the United States Code (Title 18, Sec. 264), approved June 30, 1926.

The United States Code is, of course, of no avail to the respondents because, as was pointed out in Section 2a of the statute enacting the Code (c. 712, 44 Stat. 777)—

> The matter set forth in the Code * * * shall establish prima facia the laws of the United States, general and permanent in their nature, in force on the 7th day of December, 1925; *but nothing in this Act shall be construed as repealing or amending any such law, or as enacting as new law any matter contained in the Code.* * * * [Italics ours.]

So far as the Criminal Code is concerned attention is directed to the fact that the Special Joint Congressional Committee on the Revision of Laws, which was entrusted with the codification of the criminal laws of the United States, rendered its final report to the House of Representatives on January 6, 1908, and to the Senate on January 7, 1908 (House Report No. 2, Pt. 1, 60th Cong. 1st

Sess. P. 1; Senate Report No. 10, Pt. 1, 60th Cong. 1st Sess. P. 1),[24] which was two months prior to the rendition of the *Krakowski* decision. Not only was that Committee unaware of the *Krakowski* decision, but it may be further pointed out that while Congress was considering the report of the Joint Congressional Committee there was a possibility of review of the *Krakowski* decision by this Court, which, of course, would have made action by Congress inadvisable. At the time the *Krakowski* decision was rendered the Government had one year within which to apply to this Court for a writ of certiorari,[25] and this period did not expire until March 10, 1909, six days after the approval of the Criminal Code. It is therefore evident that the action of Congress in incorporating the penal pro-

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[24] The only changes made by the Joint Congressional Joint Committee in the penal provisions as they appeared in Section 5430 of the Revised Statutes was the substitution of the words "whoever shall have or retain" in place of the words "every person * * * who has or retains" and the elimination of the words "at hard labor." The Committee explained these changes, which were applicable to all sections in the Criminal Code, as follows (p. 5): "The substitution of 'whoever' for 'every person who' is made simply to secure uniformity in style. * * * the words 'at hard labor' have been omitted pursuant to a policy approved by the Committee."

[25] See Sec. 6 of the Act of March 3, 1891, c. 517, 26 Stat. 826, 828, establishing the Circuit Courts of Appeals; *The Conqueror*, 166 U. S. 110, 114; and Historical Note to U. S. C. A., Title 28, Sec. 350.

visions involved in the Criminal Code, without substantial change, cannot be deemed as an acceptance by that body of the construction given those provisions by the *Krakowski* decision.

The respondents in their brief in opposition also make the point (pp. 8–9) that there has been an acceptance by the Executive Departments of the construction given by the *Krakowski* decision to the penal provisions involved. The respondents point to nothing affirmative to establish any such proposition, but merely rest their contention upon the assertion that, prior to the instant case, the Government during the 28 years which had elapsed since the *Krakowski* decision made no effort to overcome the effect of that decision. While it is impossible to determine at this time why a writ of certiorari was not applied for by the Government in the *Krakowski* case, it may be pointed out that since that decision the Government has in several cases prosecuted the possessors of imitations and counterfeits of the distinctive Government paper. These cases have never reached an appellate court, because the defendants either pleaded guilty [26] or were found guilty [27] and did not appeal.

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[26] *United States* v. *Rosen* (W. D. Tex.), February 14, 1931.

[27] *United States* v. *Regsich and Grubich* (W. D. Pa.), December 16, 1920; *United States* v. *Marchetti* (N. D. Ohio), June 18, 1924; *United States* v. *Maratea and Plocket* (E. D. Pa.), January 21, 1932.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgments of the Circuit Court of Appeals should be reversed.

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NOVEMBER, 1937.

APPENDIX

LEGISLATIVE HISTORY OF STATUTORY PROVISIONS INVOLVED

Act of April 30, 1790, c. 9, Section 14, 1 Stat. 115:

> SEC. 14. *And be it (further) enacted,* That if any person or persons shall falsely make, alter, forge or counterfeit, or cause or procure to be falsely made, altered, forged, or counterfeited, or willingly act or assist in the false making, altering, forging or counterfeiting any certificate, indent, or other public security of the United States, or shall utter, put off, or offer, or cause to be uttered, put off, or offered in payment or for sale any such false, forged, altered or counterfeited certificate, indent or other public security, with intention to defraud any person, knowing the same to be false, altered, forged or counterfeited, and shall be thereof convicted, every such person shall suffer death.

Act of June 30, 1812, c. 111, Sec. 10, 2 Stat. 766, 768:

> *And be it further enacted,* That if any person shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged or counterfeited, or willingly aid or assist in falsely making, forging or counterfeiting any note in imitation of or purporting to be a treasury note aforesaid; or shall falsely alter, or cause or procure to be falsely

altered, or willingly aid or assist in falsely altering any treasury note issued as aforesaid; or shall pass, utter or publish, or attempt to pass, utter or publish, as true, any false, forged or counterfeited note, purporting to be a treasury note as aforesaid, knowing the same to be falsely forged or counterfeited; or shall pass, utter or publish, or attempt to pass, utter or publish, as true, any falsely altered treasury note, issued as aforesaid, knowing the same to be falsely altered; every such person shall be deemed and adjudged guilty of felony, and, being thereof convicted by due course of law, shall be sentenced to be imprisoned and kept to hard labour for a period not less than three years nor more than ten years, and be fined in a sum not exceeding five thousand dollars.

Act of February 25, 1813, c. 27, Sec. 12, 2 Stat. 801, 803:

And be it further enacted, That if any person shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, or willingly aid or assist in falsely making, forging, or counterfeiting any note in imitation of, or purporting to be, a treasury note aforesaid; or shall falsely alter, or cause, or procure to be falsely altered, or willingly aid or assist in falsely altering any treasury note issued as aforesaid; or shall pass, utter, or publish, or attempt to pass, utter, or publish as true, any false, forged, or counterfeit note, purporting to be a treasury note as aforesaid, knowing the same to be falsely made, forged, or counterfeited; or shall pass, utter, or publish, or attempt to pass, utter, or publish as true, any falsely altered treasury note is-

sued as aforesaid, knowing the same to be falsely altered, every such person shall be deemed and adjudged guilty of felony, and being thereof convicted, by due course of law, shall be sentenced to be imprisoned and kept to hard labour for a period not less than three years, nor more than ten years, and be fined in a sum not exceeding five thousand dollars.

Act of March 4, 1814, c. 18, Sec. 12, 3 Stat. 100, 102:

And be it further enacted, That if any person shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged or counterfeited, or willingly aid or assist in falsely making, forging, or counterfeiting any note, in imitation of, or purporting to be, a treasury note as aforesaid; or shall falsely alter, or cause or procure to be falsely altered, or willingly aid or assist in falsely altering any treasury note, issued as aforesaid; or shall pass, utter, or publish, or attempt to pass, utter, or publish as true, any false, forged, or counterfeited note, purporting to be a treasury note as aforesaid, knowing the same to be falsely made, forged, or counterfeited; or shall pass, utter, or publish, or attempt to pass, utter, or publish as true, any falsely altered treasury note, issued as aforesaid, knowing the same to be falsely altered, every such person shall be deemed and adjudged guilty of felony, and being thereof convicted by due course of law, shall be sentenced to be imprisoned and kept to hard labour for a period not less than three years, nor more than ten years, and be fined in a sum not exceeding five thousand dollars.

Act of December 26, 1814, c. 17, Sec. 6, 3 Stat. 161, 162, 163:

> *And be it further enacted,* That if any person shall with intent to injure or defraud the United States, or any person or corporation, falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, or willingly aid or assist in falsely making, forging, or counterfeiting any note, in imitation of, or purporting to be, a treasury note, or shall falsely alter, or cause or procure to be falsely altered, or wilfully aid or assist in falsely altering any treasury note issued by virtue of this act, or shall pass, utter, or publish, or attempt to pass, utter, or publish, as true, any false, forged, or counterfeited note, purporting to be a treasury note as aforesaid, knowing the same to be falsely made, forged, or counterfeited; or shall pass, utter, or publish, or attempt to pass, utter, or publish, as true, any falsely altered treasury note, issued as aforesaid, knowing the same to be falsely altered, every such person shall be deemed and adjudged guilty of felony, and being thereof convicted by due course of law, shall be sentenced to be imprisoned for a period not less than three years, nor more than ten years, or imprisoned and kept to hard labor for a period not less than three years, nor more than ten years; and in either case be fined in a sum not exceeding five thousand dollars.

Act of February 24, 1815, c. 56, Sec. 11, 3 Stat. 213, 215, 216:

> *And be it further enacted,* That if any person shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged or counterfeited, or willingly aid or

assist in falsely making, forging or counterfeiting any note, in imitation of, or purporting to be, a treasury note as aforesaid; or shall falsely alter, or cause or procure to be falsely altered, or willingly aid or assist in falsely altering any treasury note issued as aforesaid; or shall pass, utter, or publish, or attempt to pass, utter, or publish, as true, any false, forged, or counterfeited note, purporting to be a treasury note as aforesaid, knowing the same to be falsely made, forged, or counterfeited: or shall pass, utter, or publish, or attempt to pass, utter, or publish, as true, any falsely altered treasury note issued as aforesaid, knowing the same to be falsely altered, or shall be, directly or indirectly, knowingly concerned in any of the offences aforesaid, every such person shall be deemed and adjudged guilty of felony; and being thereof convicted by due course of law, shall be sentenced to be imprisoned and kept to hard labour, for a period not less than three years, nor more than ten years, and be fined in a sum not exceeding five thousand dollars.

Act of October 12, 1837, c. 2, Secs. 10, 11, 5 Stat. 201, 203:

SEC. 10. *And be it further enacted,* That if any person shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, or willingly aid or assist in falsely making, forging, or counterfeiting, any note, in imitation of, or purporting to be, a treasury note aforesaid; or shall falsely alter, or cause or procure to be falsely altered, or willingly aid or assist in falsely altering any treasury note issued as aforesaid; or shall pass, utter, or publish, or attempt to pass, utter, or publish, as true,

any false, forged, or counterfeited note, purporting to be a treasury note as aforesaid, knowing the same to be falsely forged or counterfeited, or shall pass, utter, or publish, or attempt to pass, utter, or publish, as true, any falsely altered treasury note, issued as aforesaid, knowing the same to be falsely altered, every such person shall be deemed and adjudged guilty of felony, and being thereof convicted by due course of law, shall be sentenced to be imprisoned, and kept to hard labour, for a period not less than three years, nor more than ten years, and be fined in a sum not exceeding five thousand dollars.

SEC. 11. *And be it further enacted,* That if any person shall make or engrave, or cause or procure to be made or engraved, or shall have in his custody or possession any metallic plate, engraved after the similitude of any plate from which any notes issued as aforesaid shall have been printed, with intent to use such plate, or to cause or suffer the same to be used in forging or counterfeiting any of the notes issued as aforesaid; or shall have in his custody or possession any blank note or notes engraved and printed after the similitude of any notes issued as aforesaid, with intent to use such blanks, or cause or suffer the same to be used in forging or counterfeiting any of the notes issued as aforesaid; *or shall have in his custody or possession any paper adapted to the making of notes, and similar to the paper upon which any such notes shall have been issued, with intent to use such paper, or cause or suffer the same to be used in forging or counterfeiting any of the notes issued as aforesaid;* every such person, being thereof convicted by due course of law, shall be sentenced to be imprisoned, and kept to

hard labour, for a term not less than three nor more than ten years, and be fined in a sum not exceeding five thousand dollars. [Italics ours.]

Act of January 28, 1847, c. 5, Secs. 9, 10, 9 Stat. 118, 120:

SEC. 9. *And be it further enacted,* That if any person shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, or willingly aid or assist in falsely making, forging, or counterfeiting, any note in imitation of, or purporting to be, a treasury note aforesaid, or shall falsely alter, or cause or procure to be falsely altered, or willingly aid or assist in falsely altering, any treasury note issued as aforesaid, or shall pass, utter, or publish, or attempt to pass, utter, or publish as true, any false, forged, or counterfeited note, purporting to be a treasury note as aforesaid, knowing the same to be falsely forged or counterfeited, or shall pass, utter, or publish as true, any falsely altered treasury note issued as aforesaid, knowing the same to be falsely altered, every such person shall be deemed and adjudged guilty of felony, and being thereof convicted, by due course of law, shall be sentenced to be imprisoned and kept to hard labor for a period not less than three years nor more than ten years, and to be fined in a sum not exceeding five thousand dollars.

SEC. 10. *And be it further enacted,* That if any person shall make or engrave, or cause or procure to be made or engraved, or shall have in his custody or possession any metallic plate engraved after the similitude of any plate from which any notes issued as aforesaid shall have been printed, with in-

tent to use such plate, or cause or suffer the same to be used in forging or counterfeiting any of the notes issued as aforesaid, or shall have in his custody or possession any blank note or notes engraved and printed after the similitude of any notes issued as aforesaid, with intent to use such blanks, or cause or suffer the same to be used in forging or counterfeiting any of the notes issued as aforesaid, *or shall have in his custody or possession any paper adapted to the making of notes and similar to the paper upon which any such notes shall have been issued, with intent to use such paper or cause or suffer the same to be used in forging or counterfeiting any of the notes issued as aforesaid,* every such person being thereof convicted by due course of law, shall be sentenced to be imprisoned, and kept to hard labor, for a term not less than three nor more than ten years, and fined in a sum not exceeding five thousand dollars. [Italics ours.]

Act of December 23, 1857, c. 1, Secs. 12, 13, 11 Stat. 257, 259:

SEC. 12. *And be it further enacted,* That if any person shall falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, or willingly aid or assist in falsely making, forging, or counterfeiting, any note in imitation of or purporting to be a treasury note, issued as aforesaid, or shall pass, utter, or publish, or attempt to pass, utter, or publish, as true, any false, forged, or counterfeited note, purporting to be a treasury note as aforesaid, knowing the same to be falsely made, forged, or counterfeited, or shall falsely alter, or cause or procure to be falsely altered, or willingly aid or assist in falsely altering any

treasury note issued as aforesaid, or shall pass, utter, or publish, or attempt to pass, utter, or publish as true, any falsely altered treasury note, issued as aforesaid, knowing the same to be falsely altered, every such person shall be deemed and adjudged guilty of felony; and being thereof convicted by due course of law, shall be sentenced to be imprisoned and kept at hard labor for a period not less than three years nor more than ten years, and to be fined in a sum not exceeding five thousand dollars.

SEC. 13. *And be it further enacted,* That if any person shall make or engrave, or cause or procure to be made or engraved, or shall have in his custody and possession any metallic plate engraved after the similitude of any plate from which any notes issued as aforesaid shall have been printed, with intent to use such plate, or cause or suffer the same to be used in forging or counterfeiting any of the notes issued as aforesaid, or shall have in his custody or possession any blank note or notes engraved and printed after the similitude of any notes issued as aforesaid, with intent to use such blanks, or cause or suffer the same to be used in forging or counterfeiting any of the notes issued as aforesaid, *or shall have in his custody or possession any paper adapted to the making of such notes, and similar to the paper upon which any such notes shall have been issued, with intent to use such paper, or cause or suffer the same to be used, in forging or counterfeiting any of the notes issued as aforesaid;* every such person, being thereof, convicted by due course of law, shall be sentenced to be imprisoned and kept to hard labor for a term not less than three nor more than ten years, and fined in a sum not ex-

ceeding five thousand dollars. [Italics ours.]

Act of December 17, 1860, c. 1, Secs. 12, 13, 12 Stat. 123.

SEC. 12. *And be it further enacted,* That if any person shall falsely make, forge, or counterfeit, or cause or procure to be made, forged, or counterfeited, or willingly aid or assist in falsely making, forging, or counterfeiting, any note in imitation of, or purporting to be, a treasury note, issued as aforesaid, or shall pass, utter, or publish, or attempt to pass, utter, or publish, any false, forged, or counterfeited note, purporting to be a treasury note as aforesaid, knowing the same to be falsely made, forged, or counterfeited, or shall falsely alter, or cause or procure to be falsely altered, or willingly aid or assist in falsely altering any treasury note, issued as aforesaid, or shall pass, utter, or publish, or attempt to pass, utter, or publish, as true, any falsely altered treasury note, issued as aforesaid, knowing the same to be falsely altered, every such person shall be deemed and adjudged guilty of felony, and being thereof convicted by due course of law, shall be sentenced to be imprisoned and kept at hard labor for a period not less than three years nor more than ten years, and to be fined in a sum not exceeding five thousand dollars.

SEC. 13. *And be it further enacted,* That if any person shall make, or engrave, or cause or procure to be made or engraved, or shall have in his custody and possession any metallic plate engraved after the similitude of any plate from which any notes issued as aforesaid shall have been printed, with intent to use such plate, or cause or suffer the

same to be used, in forging or counterfeiting any of the notes issued as aforesaid, or shall have in his custody or possesion any blank note or notes engraved and printed after the similitude of any notes issued as aforesaid, with intent to use such blanks, or cause or suffer the same to be used, in forging or counterfeiting any of the notes issued as aforesaid, or *shall have in his custody or possession any paper adapted to the making of such notes, and similar to the paper upon which any such notes shall have been issued, with intent to use such paper, or cause or suffer the same to be used, in forging or counterfeiting any of the notes issued as aforesaid,* every such person, being thereof convicted by due course of law, shall be sentenced to be imprisoned and kept to hard labor for a term not less than three nor more than ten years, and fined in a sum not exceeding five thousand dollars. [Italics ours.]

Act of July 17, 1861, c. 5, Sec. 10, 12 Stat. 259, 261.

SEC. 10. *And be it further enacted,* That all the provisions of the act entitled "An act to authorize the issue of treasury notes," approved the twenty-third day of December, eighteen hundred and fifty-seven, so far as the same can or may be applied to the provisions of this act, and not inconsistent therewith, are hereby revived or re-enacted.

Act of February 25, 1862, c. 33, Secs. 6, 7, 12 Stat. 345, 347, 348:

SEC. 6. *And be it further enacted,* That if any person or persons shall falsely make, forge, counterfeit, or alter, or cause or procure to be falsely made, forged, counterfeited, or altered, or shall willingly aid or

assist in falsely making, forging, counterfeiting, or altering, any note, bond, coupon, or other security issued under the authority of this act, or heretofore issued under acts to authorize the issue of treasury notes or bonds; or shall pass, utter, publish, or sell, or attempt to pass, utter, publish, or sell, or bring into the United States from any foreign place with intent to pass, utter, publish, or sell, or shall have or keep in possession or conceal, with intent to utter, publish, or sell, any such false, forged, counterfeited, or altered note, bond, coupon, or other security, with intent to defraud any body corporate or politic, or any other person or persons whatsoever, every person so offending shall be deemed guilty of felony, and shall, on conviction thereof, be punished by fine not exceeding five thousand dollars, and by imprisonment and confinement to hard labor not exceeding fifteen years, according to the aggravation of the offense.

SEC. 7. *And be it further enacted*, That if any person, having the custody of any plate or plates from which any notes, bonds, coupons, or other securities mentioned in this act, or any part thereof, shall have been printed, or which shall have been prepared for the purpose of printing any such notes, bonds, coupons, or other securities, or any part thereof, shall use such plate or plates, or knowingly permit the same to be used for the purpose of printing any notes, bonds, coupons, or other securities, or any part thereof, except such as shall be printed for the use of the United States by order of the proper officer thereof; or if any person shall engrave, or cause or procure to be engraved, or shall aid in engraving, any plate or plates in the likeness or similitude of any plate or

plates designed for the printing of any such notes, bonds, coupons, or other securities, or any part thereof, or shall vend or sell any such plate or plates, or shall bring into the United States from any foreign place any such plate or plates, with any other intent or for any purpose, in either case, than that such plate or plates shall be used for printing of such notes, bonds, coupons, or other securities, or some part or parts thereof, for the use of the United States, or shall have in his custody or possession any metallic plate engraved after the similtude of any plate from which any such notes, bonds, coupons, or other securities, or any part or parts thereof, shall have been printed, with intent to use such plate or plates, or cause or suffer the same to be used, in forging or counterfeiting any such notes, bonds, coupons, or other securities, or any part or parts thereof, issued as aforesaid, or shall have in his custody or possession any blank note or notes, bond or bonds, coupon or coupons, or other security or securities, engraved and printed after the similitude of any notes, bonds, coupons, or other securities, issued as aforesaid, with intent to sell or otherwise use the same; or if any person shall print, photograph, or in any other manner execute or cause to be printed, photographed, or in any manner executed, or shall aid in printing, photographing, or executing any engraving, photograph, or other print, or impression, in the likeness or similitude of any such notes, bonds, coupons, or other securities, or any part or parts thereof, except for the use of the United States and by order of the proper officer thereof, or shall vend or sell any such engraving, photograph, print, or other impression, ex-

cept to the United States, or shall bring into the United States from any foreign place any such engraving, photograph, print, or other impression for the purpose of vending or selling the same, except by the direction of some proper officer of the United States, *or shall have in his custody or possession any paper adapted to the making of such notes, bonds, coupons, or other securities, and similar to the paper upon which any such notes, bonds, coupons, or other securities shall have been issued, with intent to use such paper, or cause or suffer the same to be used, in forging or counterfeiting any of the notes, bonds, coupons, or other securities, issued as aforesaid,* every such person so offending shall be deemed guilty of a felony, and shall, on conviction thereof, be punished by fine not exceeding five thousand dollars, and by imprisonment and confinement to hard labor not exceeding fifteen years, according to the aggravation of the offence. [Italics ours.]

Act of July 11, 1862, c. 142, Secs. 5, 6, 12 Stat. 532, 533:

SEC. 5. *And be it further enacted,* That any part of the appropriation of ten thousand dollars for the detection and bringing to trial of persons engaged in counterfeiting the coin of the United States, made by the act entitled "An act making appropriations for the legislative, executive, and judicial expenses of the government for the year ending thirtieth of June, eighteen hundred and sixty-one," approved June twenty-three, eighteen hundred and sixty, may be applied in detecting and bringing to trial and punishment persons engaged in counterfeiting treasury notes, bonds, or other se-

curities of the United States, as well as the coin of the United States. And to carry into effect the preceding sections of this act the sum of three hundred thousand dollars is hereby appropriated, out of any money in the treasury not otherwise appropriated.

SEC. 6. *And be it further enacted,* That all the provisions of the act entitled "An act to authorize the issue of United States notes, and for the redemption or funding thereof, and for funding the floating debt of the United States;" approved February twenty-five, eighteen hundred and sixty-two, so far as the same can or may be applied to the provisions of this act, and not inconsistent therewith, shall apply to the notes hereby authorized to be issued.

Act of March 3, 1863, c. 73, Sec. 8, 12 Stat. 709, 713:

SEC. 8. *And be it further enacted,* That, in order to prevent and punish counterfeiting and fraudulent alterations of the bonds, notes, and fractional currency authorized to be issued by this act, all the provisions of the sixth and seventh sections of the act entitled "An act to authorize the issue of United States notes, and for the redemption or funding thereof, and for funding the floating debt of the United States," approved February twenty-fifth, eighteen hundred and sixty-two, shall, so far as applicable, apply to the bonds, notes, and fractional currency hereby authorized to be issued, in like manner as if the said sixth and seventh sections were hereby adopted as additional sections of this act. And the provisions and penalties of said sixth and seventh sections *shall extend and apply to all persons who shall imitate, counterfeit, make,*

or sell any paper such as that used, or provided to be used, for the fractional notes prepared, or to be prepared, in the treasury department building, and to all officials of the treasury department engaged in engraving and preparing the bonds, notes, and fractional currency hereby authorized to be issued, and to all official and unofficial persons in any manner employed under the provisions of this act. And the sum of six hundred thousand dollars is hereby appropriated, out of any money in the treasury not otherwise appropriated, to enable the Secretary of the Treasury to carry this act into effect. [Italics ours.]

Act of June 30, 1864, c. 172, Secs. 10, 11, 12, 13 Stat. 218, 221, 222:

SEC. 10. *And be it further enacted,* That if any person or persons shall falsely make, forge, counterfeit, or alter, or cause or procure to be falsely made, forged, counterfeited, or altered, any obligation or security of the United States, or shall pass, utter, publish, or sell, or attempt to pass, utter, publish, or sell, or shall bring into the United States from any foreign place with intent to pass, utter, publish, or sell, or shall have or keep in possession, or conceal, with intent to utter, publish, or sell, any such false, forged, counterfeited, or altered obligation, or other security, with intent to deceive or defraud, or shall knowingly aid or assist in any of the acts aforesaid, every person so offending shall be deemed guilty of felony, and shall, on conviction thereof, be punished by fine not exceeding five thousand dollars, and by imprisonment and confinement at hard labor not exceeding fifteen years, according to the aggravation of the offense.

SEC. 11. *And be it further enacted,* That if any person having control, custody, or possession of any plate or plates from which any obligation or other security, or any part thereof, shall have been printed, or which may have been prepared by direction from the Secretary of the Treasury, for the purpose of printing any such obligation or other security, or any part thereof, shall use such plate or plates, or knowingly suffer the same to be used for the purpose of printing any such or similar obligation, or other security, or any part thereof, except such as shall be printed for the use of the United States, by order of the proper officer thereof; or if any person shall engrave, or cause or procure to be engraved, or shall aid or assist in engraving any plate or plates in the likeness or similitude of any plate or plates designed for the printing of any such obligation or other security, or any part thereof, or shall vend or sell any such plate or plates, or shall bring into the United States from any foreign place any such plate or plates, except under the direction of the Secretary of the Treasury or other proper officer, or with any other intent, or for any other purpose, in either case, than that such plate or plates shall be used for the printing of such notes, bonds, coupons, or other obligations or securities, or some part or parts thereof, for the use of the United States, or shall have in his control, custody, or possession, any metallic plate engraved after the similitude of any plate from which any such obligation or other security, or any part or parts thereof, shall have been printed, with intent to use such plate or plates, or cause or suffer the same to be used in forging or counterfeiting any such obligation or other security, or any

part or parts thereof, or shall have in his custody or possession, except under authority from the Secretary of the Treasury, or other proper officer, any obligation or other security, engraved and printed after the similitude of any obligation or other security issued under the authority of the United States, with intent to sell or otherwise use the same; or if any person shall print, photograph, or in any other manner make or execute, or cause to be printed, photographed, or in any manner made or executed, or shall aid in printing, photographing, making, or executing any engraving, photograph, or other print or impression in the likeness or similitude of any obligation or other security, or any part or parts thereof, or shall vend or sell any such engraving, photograph, print, or other impression, except to the United States, or shall bring into the United States from any foreign place any such engraving, photograph, print, or other impression, except by the direction of some proper officer of the United States, *or shall have or retain in his custody or possession, after a distinctive paper shall have been adopted by the Secretary of the Treasury for obligations and other securities of the United States, any similar paper adapted to the making of any such obligation or other security, except under authority of the Secretary of the Treasury, or some other proper officer of the United States,* every person so offending shall be deemed guilty of a felony, and shall, on conviction thereof, be punished by fine not exceeding five thousand dollars, or by imprisonment and confinement at hard labor, not exceeding fifteen years, or by both, in the discretion of the court. [Italics ours.]

SEC. 12. *And be it further enacted,* That if any person shall have or retain in his or her custody, possession, or control, without the written authority or warrant of the Secretary of the Treasury, or of the comptroller of the currency, approved by the Secretary of the Treasury, any engraved or transferred plate, block, or electrotype, or any die, roll, or other original work used in making or preparing any plate, block, or electrotype, or any plate, block, or electrotype prepared or made after the similitude of any plate, block, or electrotype, from which any obligation or other security authorized to be issued by any act of congress, or any part thereof, has been, or may hereafter be, printed, or shall use, or cause, or knowingly suffer, the same to be used, in forging or counterfeiting any such obligation or other security, or shall print, or cause to be printed, any bronzed or gilt letters or devices, or shall print, or cause to be printed, any letters, figures, or devices with green ink, or any green color or pigment, upon any note, bond, or other respresentative of value, intended or adapted to be used as a currency or a circulating medium, every such person, being thereof convicted by due course of law, shall be deemed guilty of felony, and shall be imprisoned and kept at hard labor for a term not more than ten years, and fined in a sum not more than ten thousand dollars: *Provided,* That nothing in this act shall affect any prosecution pending, or any civil or criminal liabilities incurred under any former act: *Provided, further,* That the foregoing provisions of this section shall not be held or construed to deprive any person of the right to retain in his custody and possession and use for any lawful purpose, any engraved or transferred plate, block, or

electrotype, or any die, roll, or other original work as aforesaid, which had been used by him in printing or engraving bank-notes or other obligations, before being used in printing any obligation or other security authorized to be issued by any act of congress; nor shall any of said foregoing provisions be held or construed to prohibit or restrain the lawful use by any person of any ink, color, or pigment, the exclusive right to which has been secured to any such person by letters-patent which are still in force.

Revised Statutes, Section 5430:

Every person having control, custody, or possession of any plate, or any part thereof, from which has been printed, or which may be prepared by direction of the Secretary of the Treasury for the purpose of printing, any obligation or other security of the United States, who uses such plate, or knowingly suffers the same to be used for the purpose of printing any such or similar obligation, or other security, or any part thereof, except as may be printed for the use of the United States by order of the proper officer thereof; and every person who engraves, or causes or procures to be engraved, or assists in engraving, any plate in the likeness of any plate designed for the printing of such obligation or other security, or who sells any such plate, or who brings into the United States from any foreign place any such plate, except under the direction of the Secretary of the Treasury or other proper officer, or with any other intent, in either case, than that such plate be used for the printing of the obligations or other securities of the United States; or who has in his control, custody, or possession any metallic plate en-

graved after the similitude of any plate from which any such obligation or other security has been printed, with intent to use such plate, or suffer the same to be used in forging or counterfeiting any such obligation or other security, or any part thereof; or who has in his possession or custody, except under authority from the Secretary of the Treasury or other proper officer, any obligation or other security, engraved and printed after the similitude of any obligation or other security issued under the authority of the United States, with intent to sell or otherwise use the same; and every person who prints, photographs, or in any other manner makes or executes, or causes to be printed, photographed, made, or executed, or aids in printing, photographing, making, or executing any engraving, photograph, print, or impression in the likeness of any such obligation or other security, or any part thereof, or who sells any such engraving, photograph, print, or impression, except to the United States, or who brings into the United States from any foreign place any such engraving, photograph, print, or impression, except by direction of some proper officer of the United States, or *who has or retains in his control or possession, after a distinctive paper has been adopted by the Secretary of the Treasury for the obligations and other securities of the United States, any similar paper adapted to the making of any such obligation or other security, except under the authority of the Secretary of the Treasury or some other proper officer of the United States,* shall be punished by a fine of not more than five thousand dollars, or by imprisonment at hard labor not more than fifteen years, or by both. [Italics ours.]

Act of March 4, 1909 [Criminal Code], c. 321, Secs. 148, 149, 150, 151, 152, 153, 154, 155, 35 Stat. 1088, 1115–1117:

SEC. 148. Whoever, with intent to defraud, shall falsely make, forge, counterfeit, or alter any obligation or other security of the United States shall be fined not more than five thousand dollars and imprisoned not more than fifteen years.

SEC. 149. Whoever shall falsely make, forge, or counterfeit, or cause or procure to be made, forged, or counterfeited, or shall willingly aid or assist in falsely making, forging, or counterfeiting, any note in imitation of, or purporting to be in imitation of, the circulating notes issued by any banking association now or hereafter authorized and acting under the laws of the United States; or whoever shall pass, utter, or publish, or attempt to pass, utter, or publish, any false, forged, or counterfeited note, purporting to be issued by any such association doing a banking business, knowing the same to be falsely made, forged, or counterfeited; or whoever shall falsely alter, or cause or procure to be falsely altered, or shall willingly aid or assist in falsely altering, any such circulating notes, or shall pass, utter, or publish, or attempt to pass, utter, or publish as true, any falsely altered or spurious circulating note issued, or purporting to have been issued, by any such banking association, knowing the same to be falsely altered or spurious, shall be fined not more than one thousand dollars and imprisoned not more than fifteen years.

SEC. 150. Whoever, having control, custody, or possession of any plate, stone, or other thing, or any part thereof, from which has

been printed, or which may be prepared by direction of the Secretary of the Treasury for the purpose of printing, any obligation or other security of the United States, shall use such plate, stone, or other thing, or any part thereof, or knowingly suffer the same to be used for the purpose of printing any such or similar obligation or other security, or any part thereof, except as may be printed for the use of the United States by order of the proper officer thereof; or whosoever by any way, art, or means shall make or execute, or cause or procure to be made or executed, or shall assist in making or executing any plate, stone, or other thing in the likeness of any plate designated for the printing of such obligation or other security; or whoever shall sell any such plate, stone, or other thing, or bring into the United States or any place subject to the jurisdiction thereof, from any foreign place, any such plate, stone, or other thing, except under the direction of the Secretary of the Treasury or other proper officer, or with any other intent, in either case, then that such plate, stone, or other thing be used for the printing of the obligations or other securities of the United States; or whoever shall have in his control, custody, or possession any plate, stone, or other thing in any manner made after or in the similitude of any plate, stone, or other thing, from which any such obligation or other security has been printed, with intent to use such plate, stone, or other thing, or to suffer the same to be used in forging or counterfeiting any such obligation or other security, or any part thereof; or whoever shall have in his possession or custody, except under authority from the Secretary of the Treasury or other proper officer, any

obligation or other security made or executed, in whole or in part, after the similitude of any obligation or other security issued under the authority of the United States, with intent to sell or otherwise use the same; or whoever shall print, photograph, or in any other manner make or execute, or cause to be printed, photographed, made, or executed, or shall aid in printing, photographing, making, or executing any engraving, photograph, print, or impression in the likeness of any such obligation or other security, or any part thereof, or shall sell any such engraving, photograph, print, or impression, except to the United States, or shall bring into the United States or any place subject to the jurisdiction thereof, from any foreign place any such engraving, photograph, print, or impression, except by direction of some proper officer of the United States; *or whoever shall have or retain in his control or possession, after a distinctive paper has been adopted by the Secretary of the Treasury for the obligations and other securities of the United States, any similar paper adapted to the making of any such obligation or other security, except under the authority of the Secretary of the Treasury or some other proper officer of the United States,* shall be fined not more than five thousand dolars, or imprisoned not more than fifteen years or both. [Italics ours.]

SEC. 151. Whoever, with intent to defraud, shall pass, utter, publish, or sell, or attempt to pass, utter, publish, or sell, or shall bring into the United States or any place subject to the jurisdiction thereof, with intent to pass, publish, utter, or sell, or shall keep in possession or conceal with like

intent, any falsely made, forged, counterfeited, or altered obligation or other security of the United States, shall be fined not more than five thousand dollars and imprisoned not more than fifteen years.

SEC. 152. Whoever, without authority from the United States, shall take, procure, or make, upon lead, foil, wax, plaster, paper, or any other substance or material, an impression, stamp, or imprint of, from, or by the use of any bedplate, bedpiece, die, roll, plate, seal, type, or other tool, implement, instrument, or thing used or fitted or intended to be used in printing, stamping, or impressing, or in making other tools, implements, instruments, or things to be used or fitted or intended to be used in printing, stamping, or impressing any kind or description of obligation or other security of the United States now authorized or hereafter to be authorized by the United States, or circulating note or evidence of debt of any banking association under the laws thereof, shall be fined not more than five thousand dollars, or imprisoned not more than ten years, or both.

SEC. 153. Whoever, with intent to defraud, shall have in his possession, keeping, custody, or control, without authority from the United States, any imprint, stamp, or impression, taken or made upon any substance or material whatsoever, of any tool, implement, instrument, or thing, used, or fitted or intended to be used, for any of the purposes mentioned in the preceding section; or whoever, with intent to defraud, shall sell, give, or deliver any such imprint, stamp, or impression to any other person, shall be fined not more than five thousand dollars, or imprisoned not more than ten years, or both.

SEC. 154. Whoever shall buy, sell, exchange, transfer, receive, or deliver any false, forged, counterfeited, or altered obligation or other security of the United States, or circulating note of any banking association organized or acting under the laws thereof, which has been or may hereafter be issued by virtue of any Act of Congress, with the intent that the same be passed, published, or used as true and genuine, shall be fined not more than five thousand dollars, or imprisoned not more than ten years, or both.

SEC. 155. Whoever, without authority from the United States, shall secrete within, embezzle, or take and carry away from any building, room, office, apartment, vault, safe, or other place where the same is kept, used, employed, placed, lodged, or deposited by authority of the United States, any bedpiece, bedplate, roll, plate, die, seal, type, or other tool, implement, or thing used or fitted to be used in stamping or printing, or in making some other tool or implement used or fitted to be used in stamping or printing, any kind or description of bond, bill, note, certificate, coupon, postage stamp, revenue stamp, fractional currency note, or other paper, instrument, obligation, device, or document, now or hereafter authorized by law to be printed, stamped, sealed, prepared, issued, uttered, or put in circulation on behalf of the United States; or whoever, without such authority, shall so secrete, embezzle, or take and carry away, any paper, parchment, or other material prepared and intended to be used in the making of any such papers, instruments, obligations, devices, or documents; or whoever, without such authority, shall so secrete, embezzle, or take and carry away any paper,

parchment, or other material printed or stamped, in whole or part, and intended to be prepared, issued, or put in circulation on behalf of the United States as one of the papers, instruments, or obligations hereinbefore named, or printed or stamped, in whole or part, in the similitude of any such paper, instrument, or obligation, whether intended to issue or put the same in circulation or not, shall be fined not more than five thousand dollars, or imprisoned not more than ten years, or both.

U. S. GOVERNMENT PRINTING OFFICE: 1937

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In the

[illegible] Court of the United States

October Term, A. D. 1957

[illegible] UNITED STATES OF AMERICA,

Petitioner,

v.

[illegible] RALPH BAKER,

Respondent.

[illegible] UNITED STATES OF AMERICA,

Petitioner,

v.

[illegible] ORRIN DOYLE,

Respondent.

[illegible]

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1937.

Nos. 146, 147

THE UNITED STATES OF AMERICA,
Petitioner,

vs.

RALPH RAYNOR,
Respondent.

THE UNITED STATES OF AMERICA,
Petitioner,

vs.

CHETT FOWLER,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENTS IN OPPOSITION.

OPINION BELOW.

The opinion of the Circuit Court of Appeals (R. 105-111 and 117-122) is reported in 89 F. (2d) 469. The charge of the trial court appears in the record, pages 72-80.

QUESTION PRESENTED.

The question presented is stated more clearly and satisfactorily by the majority opinion of the Circuit Court of Appeals (R. 107) than by the brief of the petitioner. The Court of Appeals' majority said:

> "Appellants contend that the paper, the possession of which is prohibited by the statute, is paper similar to the distinctive paper adopted by the Secretary of the Treasury and adapted to the making of genuine government obligations and securities. The District Attorney contends that the paper contemplated by the statute is paper, which if printed as a counterfeit obligation, would pass as currency in the general trade of the United States. Appellants assert that the test is not whether it would pass as currency in the general trade of the country, but whether it is in fact adapted to the making of valid government obligations."

STATEMENT.

The government petition speaks as if the defendants were counterfeiters engaged in counterfeiting. Such is not the fact. The respondents, Raynor and Fowler, were not counterfeiters and it was expressly understood and agreed between them that no counterfeiting would be done. (R. 13, 14, 18, 19.) The negotiations culminating in the scheme proved against respondents, were initiated by a government informer, Cones, who had himself been convicted of counterfeiting in 1931 and after serving part of his sentence was paroled and became an informer for the government, receiving compensation for each case. (R. 18.) In 1935 Cones tried unsuccessfully to implicate Fowler in illegal narcotic transactions. (R. 17, 18.) Finally Cones testified that he and Fowler agreed on a plan in substance as follows: Cones told Fowler that Cones would procure a victim with a large amount of ready cash such as $10,000 and Fowler agreed to produce a man who would pretend to but would not actually counterfeit money, and the victim would be swindled of his money by securing possession of his $10,000 and running off with it. (R. 14.)

The statement in the government petition dwells at length upon alleged dissimilarities between Government Exhibit 28 (the government paper) and Government Exhibit 3 (the paper found in defendant's possession). The government's statement omits the testimony of the witness Keller that Government Exhibit 3 was not as heavy a quality as Government Exhibit 28 (R. 64); of witness Paramore that the two papers were not similar so far as the formation of the paper is concerned (R. 68); of witness Hargitt that the two papers are not the same shade

of white and that the government paper is harder and has more sizing or glue on it; and of witness Newcomb that the government paper formation is a little "wilder" than that of Government Exhibit 3. (R. 71.)

The government petition states that: "The position of the government is that the paper contemplated by the statute need not be genuine government paper but rather paper which the average individual would believe to be the distinctive, genuine paper adopted by the government." We submit that this position of the government is erroneous as it gives effect only to the word similar in the statute, and gives no meaning to "adapted to the making of each (genuine) obligation." It also fails to account for the requirement of permission from the Secretary of the Treasury.

The theory of the government at the trial was not that Government Exhibit 3 would be mistaken by the average person for Government Exhibit 28, but the jury were asked to decide that if Government Exhibit 3 should be printed as money by the government (that is, with the highest degree of skill, with genuine government inks and on the genuine government presses and dies) the resulting counterfeit product would pass currency among average persons. (R. 54.) This involved a hypothesis contrary to fact as Mr. Gallagher, the secret service agent, testified (R. 51) that: "the government does not use any paper for printing its currency and bonds unless the paper has silk threads in it." Mr. Burton, the government employee from the Treasury Department, testified also that the government did not and would not "use any paper like that, Government Exhibit 3, for printing government obligations." (R. 56.)

Therefore the prosecution at the trial in eliciting this testimony from the witnesses required them to answer a

hypothetical question based upon an impossibility, namely, if Government Exhibit 3 (which under the law cannot be printed as money by the Department of Printing and Engraving or indeed by anyone) were to be printed as money by the Treasury Department (thereby becoming counterfeit money), whether such counterfeit money would pass currency in the general trade of the country, that is, deceive the trade into the belief that it was genuine money.

Incidentally there is no evidence that the jury would know what Government Exhibit 3 would look like if printed upon with money presses, etc. The prosecution and trial court evidently assumed that the jury could guess as to the appearance of such an imaginary and non-existent article.

ARGUMENT.

The government petition in paragraph 1 of its specification of errors does not clearly set forth the Circuit Court of Appeals' holding. That holding is best expressed by the court itself in the following succinct statement (R. 109): "Paper of the kind possessed by the defendants is in common use—it is on sale by every dealer and is possessed by thousands of citizens. Paper of the kind used by the government in printing currency is of a distinctive type in that it has impregnated red and blue silk fibers, a feature not present in commercial paper. It is not for sale by any merchant and cannot lawfully be purchased or possessed except by authority of the Secretary of the Treasurer or other proper officer. It is faithfully guarded by the government from the moment of its manufacture until it is released for circulation as government obligations. Obviously it was the possession of paper, thus suitable for and adapted to the making of the genuine obligations that Congress was outlawing. It is freely conceded that the paper in question contained no such fibers. That someone had caused red and blue pencil marks to be placed upon the paper in an effort to simulate the genuine is immaterial so far as the offense charged in the second count of the indictment is concerned. It does not require an expert to observe at a single glance that such markings are not red and blue silk fibers."

Notwithstanding the fact that two Circuit Courts of Appeals have rendered opinions against the government contention, the government petition assumes that there is a necessity for construction of the statute. Government counsel seem to avoid reference to the words of the statute and in effect contend that any paper generally

similar in appearance, although not similar in construction or formation, and although not adapted for printing government obligations, is outlawed by the statute.

No explanation is given by the government petition of the words of the statute "adapted to the making of such obligations and other securities." It cannot be successfully disputed that, as held by the Court of Appeals, the only kind of paper "adapted" for making government obligations and securities is paper which has red and blue silk threads impregnated or woven in the body of the paper. Neither can it be successfully denied that, as held by the Court of Appeals in the instant case and by the Court of Appeals in the Second Circuit in the case of *Krakowski* v. *United States*, 161 F. 88, "such" obligations in the statute are genuine and not counterfeit obligations. The failure of government counsel to discuss these vital and indispensable words, are, we respectfully submit, an admission that the holding of the Circuit Court of Appeals here is correct.

Government counsel's principal argument seems based not on the words of the statute itself but on an inference drawn from the statement of a Special Joint Congressional Committee that the law is broadened to embrace every method of counterfeiting. This statement is not at all inconsistent with the holdings in the Krakowski case (161 Fed. 88) and the present case, 89 F. (2d) 469, which protect the genuine government paper adopted by the Treasury, and similar paper adapted for printing government obligations, from possible use in counterfeiting, by prohibiting the unauthorized possession of such paper.

It is plain that the present statute is broader than the Act of 1837 from which it is derived, in that the latter required proof of an intent to counterfeit.

Therefore the assumption in the government petition

that the Courts of Appeals held that Congress intended to relax its fight against counterfeiters, is not only illogical and unfounded, but not just to those Courts.

The statutes set forth in the government petition clearly indicate that Congress at all times intended to limit the prohibited paper, by specific description, as held in the two decisions of the Courts of Appeals on which we rely. Otherwise, as said by the Court of Appeals here (R. 108) every manufacturer, merchant or printer making, using or dealing in better grade bond paper, would have to have permission from the Secretary of the Treasury to lawfully possess such paper.

We respectfully disagree with the statement of government counsel that the Court of Appeals here felt that a conviction would have been warranted upon the first count of the indictment, on which a verdict of not guilty was returned by direction of the trial court. Even were such the fact, that would not affect the construction of the clause of the statute here involved, in order to confer Federal jurisdiction of what is essentially a State matter.

We realize that respondents are subject to severe censure for yielding to the persuasions of the informer Cones and agreeing to swindle a supposed victim who was really a decoy selected by Cones, but the offense, if a crime, clearly seems within State jurisdiction. The culpability of the parties clearly cannot affect the construction of the law.

The contention in the present government brief that the Krakowski decision (161 F. 88) is erroneous, comes rather late inasmuch as that decision was rendered approximately twenty-eight (28) years ago and apparently no effort was made by the government at the time of the rendition of that decision or since, up to the present time, to overcome the effects of that decision.

The Krakowski decision was rendered in 1908. It has stood since that time to the present, not only without disapproval, but also without adverse comment thereon by any Federal court. It appears evident, therefore, that the Krakowski case has been accepted as embodying the correct interpretation of the statute for a period of some twenty-eight years, both by the Treasury Department and the Department of Justice of the United States. Had the officials of either of these departments felt that the Krakowski decision were incorrect it cannot be doubted that other prosecutions based upon the construction of the statute which was disapproved in that case, and which is the basis of the conviction in the present case, would have been instituted and have resulted in decisions by the Federal Court of Appeals, and probably the Supreme Court of the United States, in the twenty-eight year period mentioned.

In the case of *The United States* v. *Cerecedo Hermanos Y Compania,* 209 U. S. 337, 28 S. C. 532, the Supreme Court said:

> "We have said that when the meaning of a statute is doubtful great weight should be given to the construction placed upon it by the department charged with its execution. *Robertson* v. *Downing,* 127 U. S. 607, 8 S. C. 1328; *U. S.* v. *Healey,* 160 U. S. 136, 16 S. C. 247."

In addition, it is apparent that Congress has approved and acquiesced in the construction set forth in the Krakowski decision. In 1908 this statute was known as Section 5430 of the Revised Statutes. About eighteen months thereafter the statute was re-enacted without change as Section 150 of the Federal Penal Code, in force January 1, 1910. Again, this section was re-enacted, without change, as Section 264 U. S. C. A. in the Code of Laws

of the United States, in force December 7, 1925, as enacted by Congress June 28 and approved June 30, 1926. Certainly, if Congress had felt that the construction of the statute in the Krakowski case (161 Fed. 88), were erroneous, the legislature would have amended the statute either in the codification of 1910 or that of 1925, or at some other time within the twenty-eight year period.

The rule, of course, is that when a statute has been re-enacted it incorporates existing interpretations.

In *Heald* v. *District of Columbia,* 254 U. S. 20, 41 S. C. 42, the Supreme Court, at page 23, said that it was

> "a settled rule that, where provisions of a statute had previously to their re-enactment, a settled significance, that meaning will continue to attach to them in the absence of plain implication to the contrary."

To the same effect is *Bruce* v. *Tobin,* 245 N. S. 18, 38 S. C. 7.

In *U. S.* v. *Cerecedo Hermanos Y Compania,* 209 U. S. 337, 28 S. C. 532, it was said:

> "And we have decided that the re-enactment by Congress without change of a statute which had previously received long continued executive construction, is an adoption by Congress of such construction. *U. S.* v. *G. Folk & Bro.,* 204 U. S. 143, 152, 27 S. C. 191."

In *Latimer* v. *U. S.,* 223 U. S. 501, 32 S. C. 242, speaking of the meaning of the words "unmanufactured tobacco" it was said:

> "The words having received such a construction under the Act of 1883 must be given the same meaning when used in the Tariff Act of 1897, on the theory that, in using the phrase in the later statute Congress adopted the construction already given it by this Court."

In *Beale* v. *U. S.*, 71 Fed. (2d) 737 (8th C.) the Court, speaking of the fact that no amendments of a statute had been made in a three-year period since a decision of the United States Supreme Court construed the statute, said, at page 739:

> "We must conclude, therefore, that these statutory requirements as construed by the Supreme Court have Congressional sanction and approval."

In view of the fact that the law has twice been construed by two Circuit Courts of Appeals contrary to the contention of the government and that the first of these decisions has stood for a period of some twenty-eight years without adverse comment or criticism by any other court, it seems apparent, we respectfully submit, that the government here seeks to have the Supreme Court do what Congress has declined to do, namely, to make unlawful the possession of any paper which might conceivably be used in the making of counterfeit obligations. The Supreme Court has often refused to assume the functions of a legislative body. *Iselin* v. *U. S.*, 270 U. S. 245; *Federal Trade Commission* v. *Raladam Co.*, 283 U.S. 643.

CONCLUSION.

In conclusion, we respectfully submit that the questions here urged have been correctly decided by two Circuit Courts of Appeal, that the first of these decisions has stood unquestioned for twenty-eight years, that there is no conflict of decisions, or other reason for the issuance of certiorari. It is therefore respectfully submitted that the petition should be denied.

JOHN ELLIOTT BYRNE,
Attorney for Respondents.

GEORGE R. JEFFREY,
W. H. F. MILLAR,
Of Counsel.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1937.

THE UNITED STATES OF AMERICA,
Petitioner,

vs.

RALPH RAYNOR,
Respondent.

THE UNITED STATES OF AMERICA,
Petitioner,

vs.

CHETT FOWLER,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENTS.

OPINIONS BELOW.

No opinion was rendered by the District Court. The charge to the jury is set forth at record 72-80. The opinion of the Circuit Court of Appeals is reported in 89 F. (2d) 469 and is also set forth twice in the record, pages 105-111 and pages, 117-122.

JURISDICTION.

The judgments of the Circuit Court of Appeals were entered on March 23, 1937. (R. 111, 123.) Petitions for rehearing were denied on May 11, 1937. (R. 112, 123.) Petitions for writ of certiorari was filed June 15, 1937, and granted October 11, 1937. The jurisdiction of the Supreme Court was invoked under Section 240a of the Judicial Code as amended. (28 U. S. C. A. 347.)

QUESTION PRESENTED.

Whether the provisions of that portion of Section 150 of the Criminal Code (18 U. S. C. A. 264) under which respondents were convicted, refer to paper which is neither the genuine distinctive paper adopted by the Secretary of the Treasury nor paper adapted to the making of genuine government obligations and securities.

STATEMENT.

We respectfully ask leave to supplement the statement in the government brief with the following.

Section 147 of the Criminal Code (18 U. S. C. A. 261) defining obligations of the United States is copied in Appendix hereto, page 25.

The order of the Secretary of the Treasury dated February 1, 1928, adopting Distinctive Paper for United States Currency and Other Securities, is copied in Appendix hereto, page 25. (This order was not introduced in evidence at the trial, but is, we understand, the order involved in the case. (R. 52.)

The respondents, Raynor and Fowler, were not counterfeiters and it was expressly understood and agreed between them that no counterfeiting would be done. (R. 13, 14, 18, 19.) The negotiations culminating in the scheme proved against respondents, were initiated by a government informer, Cones, who had himself been convicted of counterfeiting in 1931 and after serving part of his sentence was paroled and became an informer for the government, receiving compensation for each case. (R. 18.) In 1935 Cones tried unsuccessfully to implicate Fowler in illegal narcotic transactions. (R. 17, 18.) Finally Cones testified that he and Fowler agreed on a plan in substance as follows: Cones told Fowler that Cones would procure a victim with a large amount of ready cash such as $10,000 who would be desirous of purchasing counterfeit money at one-half face value, and Fowler agreed to produce a man who would pretend to but would not actually counterfeit money, and the victim would be swindled of his money by securing possession of his $10,000 and running off with it. (R. 14.)

The indictment, as noted by the Circuit Court of Appeals, does not set forth a charge consistent with the present theory of the government. The majority opinion said:

> "The defendants were not charged with possessing paper adapted to the making of counterfeit currency that might reasonably be expected to pass in the trade of the country, but were charged with possessing paper adapted to making genuine obligations of the United States." 89 F. (2d) 472. (R. 108.)

In addition to the evidence as to similarity of Government Exhibits 3 and 28 mentioned in the government's statements, there was testimony of dissimilarity, namely, that Government Exhibit 3 was not as heavy a quality as Government Exhibit 28 (R. 64); that the two papers were

not similar as far as the formation of the paper was concerned (R. 68); that the two papers are not of the same shade of white and that the government paper is harder and has more sizing or glue on it (R. 70); that the government paper formation is a little "wilder" than that of Government Exhibit 3. (R. 71.).

Government counsel stated "Chemically, we don't contend that it is the same" (R. 50), evidently meaning that the constituent elements of the pulp from which the two papers were made, were different in quality or quantity or both.

Defense witness, Hargitt, mentioned in the government's statement, testified, "I am sure that I could pick the two papers out any place, but that probably is not what the average man could do." (R. 70.)

Government witnesses, Gallagher, a secret service agent, and Burton, a chemist and paper analyst of the Treasury Department, testified that the Treasury Department did not use any paper like Government Exhibit 3 for printing government obligations (R. 49, 51, 56), because the paper did not have silk threads in it. (R. 49, 51.)

Government witness, Burton, testified that: "most any bond paper could be used for the printing of securities" (R. 53), meaning, evidently, counterfeit securities as he and Gallagher testified that no paper other than the distinctive government paper could be used for the printing of genuine government obligations. (R. 49, 51, 56.) He also testified that the government paper would be suitable for ordinary use as typewriter paper. (R. 57.) Mr. Burton also testified that the government paper is not on the market but that a paper similar to it is (R. 57), meaning, evidently, a white bond paper but without silk threads and fibers woven therein. If government obligations were printed on Exhibit 3 there would be "just

as good an impression and just as good a printing quality" (R. 58), as if printed on the distinctive genuine government paper.

Therefore the majority of opinion of the Circuit Court of Appeals stated:

> "the Secretary of the Treasury would scarcely be called upon to grant authority to one to possess paper adapted only to the making of spurious obligations. Otherwise every manufacturer, merchant, or printer, making, dealing in, or using the higher grade bond paper similar to that adopted by the government would be required under the terms of this act to gain the permission of the Secretary of the Treasury to lawfully possess such paper. No such situation was, of course, contemplated by Congress unless such paper is at the same time adapted to the making of such genuine obligations. Under the evidence before us much of the better grades of bond paper is so adapted except for the absence of the red and blue silk fibers." (89 F. (2d) 472.) (R. 108.)

ARGUMENT.

The Statutory Provisions Involved Do Not Cover Paper Which Does Not Have Red and Blue Silk Fibers Woven into the Body of the Paper Because Without Such Fibers Woven Therein Paper Is Not Adapted for Making Genuine Obligations and Securities of the United States.

We respectfully submit that the language of the statute is plain and needs little, if any, construction to demonstrate that the paper here involved, Government Exhibit 3, is not covered by its terms. The statute seems unmistakably to refer only to paper adapted for making genuine government obligations and securities. This charge was laid under Section 150 of the Criminal Code of the United States (18 U. S. C. A. 264), which, so far as material, reads as follows:

> "* * * or whoever shall have or retain in his control or possession, after a distinctive paper has been adopted by the Secretary of the Treasury for the obligations and other securities of the United States, any similar paper adapted to the making of any such obligation or other security, except under the authority of the Secretary of the Treasury or some other proper officer of the United States, shall be fined," etc.

It is conceded that the paper here involved, Government Exhibit 3, is not adapted for making genuine obligations and securities. The Circuit Court of Appeals said:

> "The words 'such obligations or other securities' are also involved. We think such words refer back to the genuine obligations and securities of the United States. These are the plain words of both the statute and the indictment. * * * We think the argument

> of the District Attorney is directly in the face of the plain words of the statute." 89 F. (2d) 472. (R. 108.)

In the case of *Krakowski* v. *United States,* 161 F. 88, 89, the Circuit Court of Appeals of the Second Circuit said:

> "The words 'adapted to the making of such obligations' clearly refer to the obligations of the United States just before mentioned in the statute. There is no room for reading anything else into the statute and no basis for doing so."

Moreover, the requirement of authority from the Secretary of the Treasury, clearly points to paper adapted to making genuine obligations. As the majority of the Circuit Court of Appeals said (p. 472):

> "The Secretary of the Treasury would scarcely be called upon to grant authority to one to possess paper adapted only to the making of spurious obligations."

In the Krakowski case (161 Fed. 88), it was said that this clause "necessarily implies that some persons may be authorized to have it (the paper) in their possession. And, while the Secretary might properly authorize certain manufacturers to have in their possession the government paper or paper similar and adapted to making government obligations, an official authorization of the possession of paper suitable for counterfeiting would be unique in character."

A similar interpretation of a like clause was given in the case of *U. S.* v. *Addatte,* Fed. Case No. 14423 (6 Blatchf. 132), Circuit Court, Eastern District of New York, March 2, 1868, by District Judge Benedict, on motion in arrest of judgment of conviction under the Act of June 30, 1864 (13 Stat. 222). Judge Benedict held that Section 12 of that Act did not cover the case of possession

of counterfeit plates of the currency but applied only to genuine transferred plates made after the similitude of other plates. Judge Benedict, speaking of the clause requiring official authority to justify possession, said (p. 764):

> "This qualification of possession, which is by the Act made an offense, indicates an intent to restrict the effect of the Act to the case of unauthorized possession of such plates as may be within the authority of the Secretary of the Treasury, or the Comptroller of the Currency. Therefore, it does not cover a case of the possession of false or counterfeit plates, which cannot, under the law, be authorized by the Secretary of the Treasury, and which his warrant cannot protect."

In *Pirie* v. *Chgo. T. & T. Co.*, 182 U. S. 438, 451, 21 S. C. 906, 912, the Supreme Court, speaking of the rule that the intent of a statute is to be looked for in its words, said:

> "Where they are clear and involve no absurdity, they are its only expositors."

It follows, therefore, we respectfully submit, that the paper here involved, Government Exhibit 3, is clearly excluded from the operation of the statute because it does not contain red and blue silk fibers and is, therefore, not adapted for the making of the genuine obligations and securities of the United States.

However, if the contention of the government that the statute requires construction be granted, the true rule for such construction is set forth in a recent decision of this court in the case of *United States* v. *Resnick*, 299 U. S. 207; 57 S. C. 126, in which the court said at page 209:

> "Statutes creating crimes are to be strictly construed in favor of the accused; they may not be held

to extend to cases not covered by the words used. *United States* v. *Wiltberger*, 5 Wheat. 76, 95, 5 L. Ed. 37; *Fasulo* v. *United States*, 272 U. S. 620, 628, 47 S. C. 200, 201, 71 L. Ed. 443. * * * Before one may be punished, it must appear that his case is plainly within the statute; there are no constructive offenses. *United States* v. *Lacher*, 134 U. S. 624, 628, 10 S. Ct. 625, 33 L. Ed. 1080; *United States* v. *Chase*, 135 U. S. 255, 261, 10 S. Ct. 756, 34 L. Ed. 117; *Fasulo* v. *United States*, *supra*, 272 U. S. 620, at page 629, 47 S. Ct. 200, 202, 71 L. Ed. 443."

The court also said, at page 210:

"As in the absence of governmental regulation the making and selling of containers is untrammeled, failure expressly to permit is not to prohibit."

So here ordinarily possession of paper not adapted for printing government obligations and securities is untrammeled, and failure expressly to permit is not to prohibit.

In *Prussian* v. *U. S.*, 282 U. S. 675, 51 S. C. 223, holding that forgery of an indorsement upon an obligation did not constitute forgery of the obligation under Sec, 148, Criminal Code (18 U. S. C. A. 262), the court said at p. 677:

"It is apparent that a draft drawn on the Treasurer by an authorized officer is an 'obligation * * * of the United States' both in common parlance and by the express definition of Section 147. But to extend the meaning of that phrase so as to embrace the indorsement on the government draft is to enlarge the statutory definition, and would be possible only by a strained construction of the language of Sections 147 and 148, inadmissible in the interpretation of criminal statutes, which must be strictly construed. See *Fasulo* v. *U. S.*, 272 U. S. 620, 47 S. C. 200, 71 L. Ed. 443; *United States* v. *Salen*, 235 U. S. 237, 35 S. C. 51, 59 L. Ed. 210."

Reference in the government brief to statutes prohibit-

ing possession of opium is not helpful to its contention. Opium is an "illegitimate commodity," *Yee Hem* v. *United States,* 268 U. S. 178, 184, 45 S. C. 470, 471. Legitimate possession of opium, except for medicinal use, is highly improbable. Not so in the case of white bond paper which is a legitimate commodity, used extensively for legitimate purposes and only infrequently and on extraordinary occasions used for criminal purposes such as counterfeiting. Therefore interdiction of its possession because possibly it could be used for illegitimate purposes should, we respectfully submit, not be read into the statute in the absence of plain language expressing such intent.

Moreover as pointed out by the majority opinion of the Circuit Court of Appeals, the construction of the statute desired by the government would place an unreasonable burden upon thousands of manufacturers and dealers in white bond paper by requiring them to obtain authority from the Secretary of the Treasury to have possession of such paper (89 F. (2d) 472). (R. 108.)

The setting forth in the appendix to the government brief of numerous statutes against counterfeiting (most of which have been repealed) fails to give support to the government's contention here. It is not disputed that Congress wishes so far as practicable to prevent counterfeiting. However, the legislature doubtless also had in mind the preservation of the rights of the citizen and merchant and the hardship and embarrassment that would be caused to the innocent public by sweeping prohibition of the possession of legitimate and useful articles.

The construction advanced here by the government would seem to "spread a net that might catch the unwary, as well as the fraudulent." *U. S.* v. *Salen,* 235 U. S. 237, 250, 35 S. C. 51, 54. It would "fix no

standard'' by which to draw the line between innocence and guilt.

The government brief, anticipating this objection of lack of such standard in its construction of the law, says (p. 29) that any paper is prohibited which the jury finds ''so resembles the distinctive paper as to lead the ordinary individual to believe that a counterfeit made upon it is a genuine obligation of the United States.'' This is incorrect and is moreover not the issue submitted to the jury here, which issue was also incorrectly formulated.

There was no counterfeit upon the paper here. Consequently the jury could not have applied the above-mentioned standard and were not instructed to do so. The court charged (R. 77):

> ''The statute does not say that this paper, in order to be similar, necessarily has to contain threads in it. It might be similar and have markings on it that would lead one to believe that it is the genuine paper as adopted by the Secretary of the Treasury.
> 'Adapted' as defined means suitable, corresponding. This definition of the term 'adapted' does not mean that it is paper which the Government will have in its possession for making money, but the question is whether or not it is similar paper and is adapted to the making of money to pass in circulation.''

In *Iselin* v. *U. S.*, 270 U. S. 245, 46 S. C. 248, the government contended for a sweeping construction of a law imposing a tax on sales of theatre tickets. It argued (270 U. S. p. 250) that Congress intended to tax all sales of tickets and that this general purpose of Congress should be given effect, so as to reach any case within the aim of the legislation. This the Supreme Court declined to do, holding that: ''To supply omissions transcends the judicial function.'' (270 U. S. p. 251.)

Similar in principle is *U. S.* v. *Resnick*, 299 U. S. 207, 57 S. C. 126, where the law prescribed standard hampers

for fruit and vegetables in nine sizes and the government sought to have the statute construed to cover an additional size not specified in the statute. This the court refused to do.

In *Pirie* v. *Chgo. T. & T. Co.,* 182 U. S. 438, 451, 21 S. C. 906, 911, speaking of a construction of a statute, the court said:

> "It is denominated absurd by appellants. What is the test of absurdity? The contradiction of reason, it may be said, and to make an immediate application to legislation the contradiction of the reason which grows out of the subject matter of the legislation and the purpose of the legislators. But all legislation is not simple, nor its consequences obvious, or to be controlled, even if obvious. Whether there should be any legislation at all, and its extent and form, may be matters of dispute. Its consequences may be viewed with favor or with alarm; some regretted, but accepted as inevitable,—accepted as the shadow side of the good. In such situation it is for the legislature to determine, and it is very certain that the judiciary should not refuse to execute that determination from its view of some consequence which (to use the thought and nearly the words of Chief Justice Marshall) may have been contemplated and appreciated when the act was passed, and considered as overbalanced by the particular advantages the act was calculated to produce."

And at p. 452 U. S. (p. 912 S. C.) continued:

> "* * * But if in any case the plain meaning of a provision not contradicted by any other provision in the same instrument is to be disregarded because we believe the framers of that instrument could not intend what they say, it must be one in which the absurdity and injustice of applying the provision to the case would be so monstrous that all mankind would, without hesitation, unite in rejecting the application."

Again as noted by the majority opinion of the Circuit Court of Appeals (89 F. (2) 472) the contention of the

government would make the provisions of the statute far more drastic with respect to white bond paper than with respect to other articles constituting much more advanced steps in counterfeiting. Thus in the fifth clause of the statute there is forbidden the possession of a spurious obligation with the intent to sell or use same. A spurious obligation is, of course, in its nature essentially illegitimate and adapted primarily for unlawful purpose such as selling or using as currency. White bond paper is in its nature essentially legitimate and adapted primarily for lawful business and mercantile purposes. Nevertheless if the contention of the government were sound, this fifth clause would be more difficult of proof than the seventh clause relating to paper because the mere possession of paper constitutes an offense while the possession of a spurious obligation is not criminal unless accompanied by a specific intent to sell or use. In short, the government's contention logically means that the possession of white bond paper without more is criminal while the possession of a counterfeit obligation without more is not criminal. The possession of a legitimate article, namely, white bond paper which might possibly in rare instances be put to an unlawful use of producing an illegitimate object, a counterfeit obligation or security, would be punished, while the possession of the unlawful article itself would not be punished. Similar inconsistencies in meaning could be pointed out between the seventh clause and other clauses of the statute if the government construction were adopted.

Some of the contentions of the government are based upon language in former statutes which have been repealed and have not been reenacted, or when reenacted, lacked the language on which the government relies. Thus Section 7 of the Act of February 25, 1862, c. 33,

12 Stats. 345, prohibited the custody or possession of the described paper, "with intent to use such paper or suffer the same to be used, in forging or counterfeiting any of the notes, bonds, coupons or other securities", etc. The reason for prohibiting the possession without authority of such paper unquestionably was and is to prevent the possibility of its use in counterfeiting (printing illegally or without official authority) the obligations and securities of the United States. Feeling, no doubt, that the possession of the genuine government paper or a duplicate thereof with silk threads woven therein was so extraordinary and uncalled for on the part of a private individual or firm that the possessor should be required to explain such possession as legitimate, without requiring proof by the prosecution of specific criminal intent, Congress repealed the requirement of proof of specific intent.

In *U. S.* v. *Addatte, supra*, Fed. Case No. 14423 (6 Blatchf. 132), Judge Benedict said of Section 12 of the Act of June 30, 1864 (13 Stat. 222):

> "In the section under consideration, an intent to use the plate is not made a part of the offense, and for the reason that, as the section is applicable only to genuine plates, which are intended to be kept within the control of the government, the unauthorized possession is to be considered as itself an unlawful act, without regard to any intention to use the plates."

This change in the law strengthens respondents' position with respect to the meaning of the law. It cannot be doubted that if Congress wished to strike at the possession of white bond paper which is only incidentally suitable for counterfeiting (R. 53, 58), but primarily for many legitimate uses, the legislature would have retained the requirements of specific evil intent or of a definite overt act just as it had done in the instance of other articles much further advanced toward the completion of the act

of counterfeiting, such as the possession of a plate with intent to use in counterfeiting, the possession of a spurious obligation with intent to sell or use, etc., or the making or selling of a plate, print, photograph, etc., without official authority. (See majority opinion of the Circuit Court of Appeals, 89 F. (2d) 472.)

Very significant in this connection is the fact that when Congress wished to punish imitating and counterfeiting the government paper it said so in plain language in Section 8, Act of March 3, 1863, c. 73, 12 Stat. 709 (see p. 50, Appendix to Government Brief). Also significant is the fact that this section has been repealed and is not law at the present time.

The quotations in the government brief from the English statute confirm the accuracy of the statement in the Krakowski case (161 Fed. 88) that the clause here involved was modeled upon the English section relating to genuine government paper (24 and 25 Vict., c. 98, Sec. 11).

An entirely different section of the English law (Sec. 10) covers making paper having in its "Substance" * * * "any Words, Letters, Figures, Marks, Lines, Threads, or other Devices peculiar to and appearing in the Substance of any Paper provided or used for such Exchequer Bills, Bonds, or Debentures," etc., and "intended to imitate the same." This section also provides punishment for possessing *"any Paper whatsoever"* in the Substance whereof shall appear any such words, etc., and intended to imitate.

The clause in our law here involved clearly bears no analogy to the last mentioned section (Sec. 10) but does closely resemble the terms of Sec. 11 of the British law relating to genuine government paper.

The contention of the government that since it is claimed counterfeits are seldom made upon genuine government paper, the statute should be given a broad construction in order to cover all papers incidentally suitable for counterfeiting, seems without force. The fact that the law is effective in protecting the government paper does not seem to be reason for enlarging the meaning of the statute to cover paper having no relationship to the government paper. Moreover the argument ignores the effect of the law on similar paper "adapted" (having silk threads in the body) for making genuine obligations.

We suggest that the construction proposed by the government would inure rather to the protection of individuals than of the currency of the United States. Respondents are deserving of severest censure and possibly are amenable to state laws. However, the plan in which they were involved did not contemplate counterfeiting but instead a swindle upon a person represented by the informer Cones to be desirous of buying counterfeit money at a price of one-half face value. There was no evidence by the Government that counterfeit money is usually (or ever) printed on paper having pencil marks on the surface like Govt. Ex. 3.

In *Prussian* v. *U. S.*, 282 U. S. 675, 51 S. C. 223, this court held that forging an indorsement of the payee's name on a government draft was not forgery of an obligation of the United States under Sec. 148 of the Criminal Code (18 U. S. C. A. 262). The court said at p. 678:

> "Its (Sec. 148) purpose has been declared by this court to be the protection of the bonds or currency of the United States, and not the punishment of any fraud or wrong on individuals."

A significant clause is found in another statute set forth in the appendix to the government brief. In Section 12

of the Act of June 30, 1864, c. 172, 13 Stats. 218, it was made a crime to print any bronzed or gilt letters or to print any letters, figures or devices with green ink upon any note, bond, etc., provided that the provisions should not be construed to prohibit or restrain the lawful use by any person of any ink, color or pigment, the exclusive right to which had been secured by letters patent. Commercial white bond paper certainly is no more dangerous as a possible instrumentality in counterfeiting than is green ink. The law carefully limited the application of the statute to the use of green ink. Notwithstanding such limitation, however, the statute was repealed and at the present time (so far as we can ascertain) there is no prohibition of the possession of green ink, notwithstandig its possible use as a means of counterfeiting.

The majority opinion of the Circuit Court of Appeals (89 F. (2) 472) held that the words of the statute "such obligation or other security" refer to the genuine obligations and securities of the United States. So also did the Krakowski decision, 161 Fed. 88. Government counsel have been unable to suggest any other reasonable meaning to these words. The dissenting opinion of Judge Lindley contends that the statutory construction adopted is "strained and over-literal." This, we respectfully suggest, is an admission that the majority properly construed the letter of the law. We also submit that its construction of the law is in accord with its spirit and intent and that the broad and sweeping interpretation of the statute advanced by Judge Lindley and government counsel would, if adopted, constitute virtually legislative enactment by the courts. The construction advanced by Judge Lindley and government counsel seems consistent only with an assumption that Congress did not say what it intended to say. We submit this is not so, but if it were so, it is not the province of the courts to supply omissions of the stat-

ute. In *Pirie* v. *Chgo. T. & T. Co.*, 182 U. S. 438, 452, 21 S. C. 906, 912, the Supreme Court said:

> "No mere omission, no mere failure to provide for contingencies, which it may seem wise to have specifically provided for, justify any judicial addition to the language of the statute."

In *Iselin* v. *U. S.*, 270 U. S. 245, 250, 46 S. C. 248, 250, this Court said:

> "The statute is evidently drawn with care. Its language is plain and unambiguous. What the government asks is not a construction of a statute, but, in effect, an enlargement of it by the court, so that what was omitted presumably by inadventence, may be included within its scope. To supply omissions transcends the judicial function. Compare *United States* v. *Weitzel*, 246 U. S. 533, 543; *Peoria* v. *Pekin Union Ry. Co.*, 263 U. S. 528, 534, 535."

Moreover, if the statute had been intended by Congress to have the broad and sweeping interpretation disapproved in the Krakowski decision, 161 Fed. 88, surely it would have been amended to overcome the effect of that decision, in the twenty-eight year period since its rendition.

II.

The Holding in the Krakowski Case That the Statute Applies Only to Paper Adapted for Making Genuine Obligations and Securities, Has Been Acquiesced In By Congress and the Department of Justice For Twenty-eight Years.

The Krakowski decision (161 Fed. 88) was rendered in 1908. It has stood since that time to the present, not only without disapproval, but also without adverse comment thereon by any Federal court. Moreover, there is no

reported decision indicating that the Department of Justice took issue with that decision until the present case. It appears evident, therefore, that the Krakowski case has been accepted as embodying the correct interpretation of the statute for a period of some twenty-eight years, both by the Treasury Department and the Department of Justice of the United States. Had the officials of either of these departments felt that the Krakowski decision were incorrect it cannot be doubted that other prosecutions based upon the construction of the statute which was disapproved in that case, and which is the basis of the conviction in the present case, would have been instituted and have resulted in decisions by the Court of Appeals, and probably the Supreme Court of the United States, in the twenty-eight year period mentioned.

Indeed, in 1868, forty years before the Krakowski decision, Judge Benedict in *U. S.* v. *Addatte, supra,* Fed. Case No. 14423 (6 Blatchf. 132) attributed to the clause without authority from the Secretary of the Treasury, substantially the same purpose and meaning later attributed to it in the Krakowski case.

The indictment here (R. 3) gives evidence of this Departmental acquiescence, as the charge is that the paper was adapted to the making of "such" meaning genuine obligations of the United States, as held by the Courts of Appeals in both the Krakowski (161 F. 88, 89) and Raynor (89 F. (2d) 469, 472). cases.

In the case of *United States* v. *Cerecedo Hermanos Y Compania,* 209 U. S. 337, 339, 28 S. C. 532, the Supreme Court said:

> "We have said that when the meaning of a statute is doubtful great weight should be given to the construction placed upon it by the department charged with its execution. *Robertson* v. *Downing,* 127 U. S. 607, 8 S. C. 1328; *U. S.* v. *Healey,* 160 U. S. 136, 16 S. C. 247.

In addition, apparently Congress has approved and acquiesced in the construction set forth in the Krakowski decision. In 1908 this statute was known as Section 5430 of the Revised Statutes. About eighteen months thereafter the statute was re-enacted without change as Section 150 of the Federal Penal Code, in force January 1, 1910. Again, this section was re-enacted, without change, (Section 264 U. S. C. A.) in the Code of Laws of the United States, in force December 7, 1925, as enacted by Congress June 28 and approved June 30, 1926. Certainly, if Congress had felt that the construction of the statute in the Krakowski case (161 Fed. 88), were erroneous, the legislature would have amended the statute either in the codification of 1910 or that of 1925, or at some other time within the twenty-eight year period.

The rule, of course, is that when a statute has been re-enacted it incorporates settled existing interpretations.

In *Heald* v. *District of Columbia,* 254 U. S. 20, 41 S. C. 42, the Supreme Court, at page 23, said that it was

> "a settled rule that, where provisions of a statute had previously to their re-enactment, a settled significance, that meaning will continue to attach to them in the absence of plain implication to the contrary."

To the same effect is *Bruce* v. *Tobin,* 245 U. S. 18, 38 S. C. 7.

In *U. S.* v. *Cerecedo Hermanos Y Companio,* 209 U. S. 337, 339, 28 S. C. 532, it was said:

> "And we have decided that the re-enactment by Congress without change of a statute which had previously received long continued executive construction, is an adoption by Congress of such construction. *U. S.* v. *G. Folk & Bro.,* 204 U. S. 143, 152, 27 S. C. 191."

In *Latimer* v. *U. S.,* 223 U. S. 501, 504, 32 S. C. 242,

speaking of the meaning of the words "unmanufactured tobacco" it was said:

> "The words having received such a construction under the Act of 1883 must be given the same meaning when used in the Tariff Act of 1897, on the theory that, in using the phrase in the later statute Congress adopted the construction already given it by this Court."

In *Beale* v. *U. S.*, 71 Fed. (2d) 737 (8th C.) the Court, speaking of the fact that no amendments of a statute had been made in a three-year period since a decision of the United States Supreme Court construed the statute, said, at page 739:

> "We must conclude, therefore, that these statutory requirements as construed by the Supreme Court have Congressional sanction and approval."

In view of the fact that the law has twice been construed by two Circuit Courts of Appeals contrary to the contention of the government and that the first of these decisions has stood for a period of some twenty-eight years without adverse comment or criticism by any other court, it seems apparent, we respectfully submit, that the government here seeks to have the Supreme Court do what Congress has declined to do, namely, to make unlawful the possession of any paper which might conceivably be used in the making of counterfeit obligations. The Supreme Court has often declined to assume the functions of a legislative body. *Iselin* v. *U. S.*, 270 U. S. 245; *Federal Trade Commission* v. *Raladam Co.*, 283 U. S. 643.

III.

Regardless of the Construction of the Statute, the Judgments of the Circuit Court of Appeals Should Be Sustained Because There Was No Evidence In Support of the Offense Charged in the Indictment.

Even were the construction advanced here by the government correct, the judgments of the Circuit Court of Appeals in the instant case should be sustained. The Court of Appeals said (89 F. (2d) 472):

> "The defendants were not charged with possessing paper adapted to the making of counterfeit currency that might reasonably be expected to pass in the trade of the country, but were charged with possessing paper adapted to making genuine obligations of the United States."

In the Krakowski case, 161 F. 88, a similar indictment was similarly construed, the court saying:

> "He (defendant) was indicted for having in his possession paper adapted to the making of the obligations 'aforesaid', which were the obligations of the United States. He was not indicted for having paper adapted to the making of unlawful securities. Counterfeit money is not an obligation of the United States."

It is and has been conceded by the Government throughout that Government Exhibit 3 is not adapted for making genuine obligations. Therefore the Court of Appeals concluded (89 F. (2d) 473):

> "We * * * believe that under the undisputed evidence here the defendants were not guilty of the offense defined by the statute and charged in the second count of the indictment."

It therefore follows that as the charge in the indictment was not sustained by the evidence, the conviction should be reversed as directed by the Circuit Court of Appeals.

CONCLUSION.

In conclusion, we respectfully submit that the decision of the Circuit Court of Appeals was correct and its judgments should be affirmed.

Respectfully submitted,

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APPENDIX.

Section 261, Criminal Code (18 U. S. C. A. 261).

The words "obligation or other security of the United States" shall be held to mean all bonds, certificates of indebtedness, national bank currency, coupons, United States notes, Treasury notes, gold certificates, silver certificates, fractional notes, certificates of deposit, bills, checks, or drafts for money, drawn by or upon authorized officers of the United States, stamps and other representatives of value, of whatever denomination, which have been or may be issued under any Act of Congress.

Distinctive Paper for United States Currency and Other Securities

1928

Department Circular No. 394

Public Debt

Treasury Department,
Office of the Secretary,
Washington, February 1, 1928.

1. Notice is hereby given that the Secretary of the Treasury, by authority of law, has adopted a new distinctive paper for use in printing United States currency and other securities.

2. The new distinctive paper is a cream-white bank-note paper which closely resembles in general appearance the paper now in use. The distinctive feature of the new paper consists of small segments of red and blue silk fiber

incorporated in the body of the paper while in process of manufacture and evenly distributed throughout.

3. The new distinctive paper shall be used for printing currency of the reduced size, including United States notes, gold certificates, silver certificates, Federal reserve notes, and national bank notes. The use of the present distinctive paper adopted on July 30, 1891, the distinctive feature of which consists of localized red and blue silk fiber incorporated in the body of the paper while in the process of manufacture so placed as to form perpendicular stripes, will be continued for any printing of currency of the present size hereafter required.

4. After the issue of the reduced size currency, the new distinctive paper shall thereafter be used for the printing of interest-bearing securities of the United States, and for any other printing where the use of distinctive paper is indicated; provided, however, that any then existing stocks of blank paper containing the present distinctive feature may be utilized.

5. The Secretary of the Treasury hereby gives notice that the new distinctive paper, together with any other distinctive paper heretofore adopted for the printing of paper currency or other obligations or securities of the United States is and will be subject to the provisions of section 150 of the United States Criminal Code, approved March 4, 1909 (sec. 5430 of the Revised Statutes; sec. 264 of title 18 of the United States Code), which provides, in part, as follows:

Whoever shall have or retain in his control or possession, after a distinctive paper has been adopted by the Secretary of the Treasury for the obligations and other securities of the United States, any similar paper adapted to the making of any such obligation or other security, except under the authority of the Secretary of the Trea-

sury or some other proper officer of the United States, shall be fined not more than five thousand dollars, or imprisoned not more than fifteen years, or both.

6. The provisions of Department Circular No. 121, dated July 30, 1891, are modified accordingly.

A. W. MELLON,
Secretary of the Treasury.

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Nos. 146, 147

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1937.

THE UNITED STATES OF AMERICA,
Petitioner,

vs.

RALPH RAYNOR,
Respondent.

THE UNITED STATES OF AMERICA,
Petitioner,

vs.

CHETT FOWLER,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

MEMORANDUM FOR RESPONDENTS.

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MEMORANDUM FOR RESPONDENTS.

Respondents respectfully ask leave of court to file this brief answer to contentions of the Government made for the first time on oral argument.

THE RELATION OF SECTIONS 155 AND 150 OF THE CRIMINAL CODE TO EACH OTHER.

In the oral argument, government counsel contended in substance, as we understood it, that Section 150 (18

U. S. C. A. 264) here involved did not refer to genuine distinctive government paper because Section 155 (18 U. S. C. A. 269) completely covered the matter of unlawful possession of such paper and that therefore the two sections would be repetitions of each other.

However, a careful reading of the two sections discloses that they are in fact complementary or supplementary of each other. The second clause of Section 155 (18 U. S. C. A. 169) punishes the secreting, embezzling, or taking or carrying away, without lawful authority, of genuine paper (before being printed). Section 155 does *not* cover the *unlawful possession* of such genuine Government paper. Unlawful possession of such genuine Government paper is covered by the clause of Section 150 (18 U. S. C. A. 264), herein involved.

The oral contention of the Government respecting Section 155 is also repugnant to its contention in the Government brief (pp. 12, 18, 27, 31, 32) that "Since the distinctive paper is seldom used in making counterfeits, the instant provisions, if the construction of the court below were to prevail, would be practically valueless in combating counterfeiting," etc. This contention is destroyed by the undisputed fact that Congress has protected the genuine distinctive paper from secreting, embezzling and carrying away in Section 155, which provisions would be needless if the Government's contention were sound.

In addition, the punishment of unlawful possession of the distinctive paper clearly was intended by Congress in Section 150 to supplement Section 155. To hold otherwise would mean that if the theft or embezzlement of Government paper were successfully completed and possession transferred to a "fence," the latter would be immune from prosecution.

This contention of the Government regarding Sections 155 and 150 is further overcome by the provisions of Section 172, Criminal Code (18 U. S. C. A. 286). This section has not been quoted in the Appendix to the Government brief. We therefore quote it in full as follows:

Section 172 (18 U. S. C. A. 286):

> "All counterfeits of any obligation of other security of the United States or of any foreign government, or counterfeits of any of the coins of the United States or of any foreign governments, and all material or apparatus fitted or intended to be used, or that shall have been used, in the making of any such counterfeit obligation or other security or coins hereinbefore mentioned, that shall be found in the possession of any person without authority from the Secretary of the Treasury or other proper officer to have the same, shall be taken possession of by any authorized agent of the Treasury Department and forfeited to the United States, and disposed of in any manner the Secretary of the Treasury may direct. Whoever, having the custody or control of any such counterfeits, material, or apparatus shall fail or refuse to surrender possession thereof upon request by any such authorized agent of the Treasury Department, shall be fined not more than $100, or imprisoned not more than one year or both."

This clearly indicates that the possession (without specific evil intent elsewhere denounced) of paper, that is, "material fitted to be used in the making of any such counterfeit obligation" is not nearly so serious an offense as that of possession of the genuine Government paper adapted for making Government obligations and also clearly demonstrates that the purpose and necessity urged by the Government for its construction of Section 150 is not applicable because such purpose and necessity are met by the provisions of Section 172.

At the oral argument Government counsel frankly admitted what is more guardedly expressed in its brief (p. 21) that its construction of Section 150 would ask the court to read the statutory words "adapted for making such obligations" as meaning "adapted for falsely making or counterfeiting such obligations." This is exactly the meaning of Section 172 and far from the meaning and language of Section 150 and of the indictment herein.

Respectfully submitted,

JOHN ELLIOTT BYRNE,
Attorney for Respondents.

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Respondent.

PETITION FOR REHEARING

Respondents by their attorney respectfully petition this honorable court to grant a rehearing of the above entitled cause, and in support of said petition, respectfully show the following:

The decision of the court causes several results which create great confusion in the counterfeiting laws and are otherwise injurious to the public interest, most important of which results perhaps are the following, viz:

(1) Because of the decision, the unauthorized possession of genuine government paper is nowhere punishable by the law.

(2) Because of the decision, the statutory provisions here involved are inconsistent with and nullify the provisions of Section 148 requiring intent to constitute the crime of forgery or counterfeiting; of Section 150 requiring intent to constitute the crime of possession of counterfeit plates; of Section 150 requiring intent to constitute the crime of possessing a counterfeit obligation; of Section 151 requiring intent to constitute the crime of passing a counterfeit obligation; of Section 151 requiring intent to constitute the crime of possessing a counterfeit obligation; of Section 153 requiring intent to constitute the crime of possessing imprints, etc. of tools, etc. fitted to be used in printing an obligation or bank note; and of Section 154 requiring intent to constitute the crime of buying and selling counterfeits.

(3) Because of the decision, the mere possession of paper for counterfeiting (regardless of intent) is punishable much more severely than is the completed crime of buying, selling, etc. any counterfeit obligation, with the intent that the same shall be passed, etc., as true and genuine. (Sec. 154 U. S. Criminal Code).

(4) Because of the decision, the mere possession of commercial white bond paper by anyone (without authority from the Treasury) is condemned, for all such paper is similar to the genuine government paper and is adapted for making counterfeit obligations.

We respectfully submit a short discussion of these points under their respective paragraph numbers.

(1) The majority opinion excludes the distinctive paper from the protection of the law. Protection against unauthorized possession of the distinctive paper seems clearly to be more necessary than protection against possession of an imitation of such paper. The distinctive paper is much more of a dangerous instrumentality in the hands of a counterfeiter than is a mere imitation of the distinctive paper. Thus a counterfeiting upon distinctive paper would be much more deceptive and injurious than one upon imitation paper because much more difficult of detection, and would be more injurious to the credit of the country's currency and to the public interest than a counterfeiting upon similar paper, which can be detected with comparative ease. We suggest that Congress had this danger in mind in drawing the law here involved, and in directly referring to distinctive paper, and omitting all reference to imitating or counterfeiting it.

Each of the statutes relied on in the majority opinion expressly uses one or more of the words "forging, counterfeiting, imitating." The omission of each and all of these words from Sec. 150 is highly significant and indicates plainly, we submit, that Congress here was concerned with the preventing of unauthorized possession of the "distinctive paper" rather than imitations thereof.

It is noteworthy that in all statutes in which Congress wished to prohibit counterfeiting, it has said so directly and plainly and not resorted to indirection or

inference. Therefore the omission of any such words in the clause of Sec. 150 here involved, in the counterfeiting laws, which have had the careful thought and phrasing of Congress for more than a century, unmistakably indicates that this clause is not the ordinary prohibition of counterfeiting, but instead a guarding of the "distinctive" government paper as held in the minority decision of this court, the majority opinion of the Court of Appeals herein, and the unanimous opinion of the Court of Appeals (2nd Cir.) in the Krakowski case, 161 Fed. 88.

The Act of 1863 mentioned in the majority opinion expressly applied to "all officials of the Treasury Department engaged in engraving and preparing the bonds, notes and fractional currency hereby authorized to be issued, and to all official and unofficial persons in any manner employed under the provisions of this Act." (Appendix Gov't. Brief, p. 52). This language clearly indicates that Congress was desirous of protecting against unlawful use of genuine paper, plates, etc., by government officials and employes having lawful custody and charge of them. This protection, we submit, was cast over the distinctive government paper by the provisions of the Act of 1864, and continued in the language of the clause here involved.

(2) The drastic nature of the statutory provisions here involved is such as to indicate clearly an unusual and extraordinary subject-matter, the very possession of which is forbidden to the public. Such inhibitions are usually found in connection with dynamite, poisons, habit-forming drugs, deadly weapons, and the like. Here, however, paper is referred to. Is it this

common white bond commercial paper, to be found ordinarily in the possession of millions of citizens, being kept for legitimate use, or is it the distinctive government paper which can only come into the possession of the ordinary person by an irregularity, and for which he has no legitimate use? Surely the latter.

The drastic nature of the law must have basis in an unusual and extraordinary possession that is at once either actually or potentially very injurious to the public interest and also of such a nature that it could rarely if ever be innocent. The only paper whose possession falls within the class last mentioned is distinctive paper with red and blue silk fibres therein, which can only be manufactured for government use, and with which no person unauthorized by the Treasury Department has anything to do. To hold, as does the majority opinion, that the law prohibits the possession of all paper suitable for counterfeiting, creates much confusion, we submit, in many other sections of the law and nullifies to a large extent their provisions. Thus, under the majority decision, possession of such paper is a crime (without intent), while under Section 148, forgery or counterfeiting of government obligations (without intent) is not a crime; under Section 150, possession of a counterfeit plate (without intent) is not a crime; under Section 150, possession of counterfeit obligation (without intent) is not a crime; under Section 151, passing of a counterfeit obligation (without intent) is not a crime, nor is the possession of such counterfeit obligation (without intent) a crime; under Section 153, the possession without authority (without intent) of imprints, etc. of tools, etc. fitted to be used in printing

or stamping an obligation or bank note, is not a crime, and under Section 154 the buying or selling of counterfeits (without intent) is not a crime.

All of these provisions, we respectfully submit, seem in conflict with the clause here involved, if the majority decision herein is allowed to stand as the authoritative construction of the law in question.

(3) The dissenting opinion of this court, the majority opinion of the Court of Appeals herein, and the unanimous opinion of the Court of Appeals in the Krakowski case, 181 Fed. 88, all agree that a decision such as that taken by the majority of the Supreme Court, causes the statute to apply to every dealer having high grade white bond paper. Mr. Burton, Government witness, also testified that "most any bond paper could be used for the printing of securities." (R. 33) meaning of course, counterfeit securities. "You could print them (obligations) on it and get just as good an impression and just as good a printing quality." (R. 58).

We respectfully submit that Congress did not intend to punish such possession of white bond paper, nor to require every dealer and citizen having possession thereof to obtain authority from the Treasury therefor.

(4) Comparison of the statutory clause here involved with other offenses in the counterfeiting laws, seems to demonstrate clearly that the dissenting opinion is right in stating that these provisions were not meant to cover counterfeiting, or preparations

antecedent to counterfeiting. At most, the possession of paper suitable for counterfeiting is but one of the many steps or acts necessary before the counterfeit is completed. Nevertheless, under the majority decision, this preliminary act of possession of paper alone would be punishable, while the commission of this act, coupled with the other numerous acts necessary to complete the finished counterfeit, would not be punished. The part would be a crime, but the whole would not be.

Again, white bond paper, whether with or without red and blue marks on its surface, is nothing more than one of many potential ingredients of a counterfeit obligation. Inasmuch as the possession of the completed counterfeit is not a crime, surely possession of merely one of the potential ingredients of such counterfeit, could not be a crime.

On the other hand the mere possession of white bond paper is so common and so rarely used for illegitimate purposes that Congress certainly would not condemn such possession without evil intent.

All of the other inhibitions of possession of articles found in Sections 148 to 155, inclusive, (Appendix, Government Brief, pp. 58-60) are coupled with a specific wrongful intent.

Surely the possession of unprinted paper would not be made punishable regardless of intent, when the possession of plates suitable for counterfeiting and the very completed counterfeit obligation itself, is not punished unless accompanied by the specific evil

intent to use them wrongfully. (Section 150, Criminal Code).

CONCLUSION

In conclusion, we respectfully pray that this Honorable Court may grant a rehearing of the above causes, and that the judgments of the Circuit Court of Appeals may be affirmed.

Respectfully submitted,

JOHN ELLIOTT BYRNE,
Attorney for Respondents.

CERTIFICATE

I, John Elliott Byrne, attorney for Respondents, Robert Raynor and Chett Fowler, do hereby certify that the foregoing petition for a rehearing of the above entitled causes, is presented in good faith and not for delay.

JOHN ELLIOTT BYRNE,
Attorney for Respondents.

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SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR REHEARING.

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SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR REHEARING.

Respondents heretofore filed their petition respectfully requesting this Honorable Court to grant a rehearing of the above entitled cause. The petition and the discussion of the questions presented thereby clearly direct attention to what we earnestly believe constitutes error in the reasoning of and in the conclusions drawn by the court in its majority opinion.

With all due respect for the views expressed by the court we, after a full consideration of the opinion rendered feel

constrained to insist that the conclusions reached are not warranted by the law or the particular facts in the case. We know there can be no pride of opinion in the mind of the Court, but that the sole purpose is to reach a just and proper decision in this particular case. With this idea in mind, we beg to present our views, hoping thereby to be of some aid to the Court and at the same time to obtain for Respondents a rehearing and correct what they believe to be error.

I.

Let us consider the case in the light of the charges contained in the indictment. The first count charged defendants with violating that section of the statute, pertaining to the making of impressions "such as could be used in the making of counterfeit money" (R. P. 71). Under this count the court admitted a large amount of evidence as shown by the testimony of the witnesses Clarence Cones (R. Pp. 11 to 19), and Thomas A. Gallagher (R. Pp. 19-51), which become wholly incompetent and prejudicial to defendants, for at the conclusion of all of the evidence, counsel for defendants moved for a directed verdict of "not guilty" as to Count No. 1 (R. Pp. 71-72). This motion was granted (R. p. 72), the court stating

> "I think the evidence fails to show that the impressions that were made by these defendants are such impressions as could be used for that purpose. It is more of a transfer of the ink from one paper to another and could not be used for the making of money to pass as genuine money. Therefore, under that situation it becomes my duty to direct that you return a verdict of not guilty so far as the first count is concerned." (R. P. 72)

In view of this ruling all of the evidence received from the two witnesses named in relation to count No. 1 became incompetent in so far as it related to the charge contained in count No. II, yet the court failed to direct the jury to

disregard this evidence when they came to consider count II. The court merely said:

> "That the action of the court in this regard should not influence you any in arriving at your verdict in count II, which is having in their possession paper similar to that used by the U. S. Government and which may be used for the purpose of making money." (R. 72)

The jury, therefore, was permitted to consider the mass of incompetent testimony with relation to defendants having in their possession at the time of arrest, to illustrate Exhibits Nos. 1 and 2, the reverse impressions of the face and back of a $20.00 note (R. 28), Exhibit 7 which purports to be a leather case with some colored fluid in it; Exhibit 8 consists of some metal pans, in which fluid was mixed; Exhibit 9 which is a rubber coated metal roller; Exhibit 10 a mortar and pestel; Exhibit 11 a graduate tube for measuring fluids; Exhibit 12 a graduate flask; Exhibit 14 a stack of blotters (R. P. 37); Exhibits 16 and 17 purported to be glass plates used in a transfer process; Exhibit 20 a medicine dropper; Exhibit 21A a test tube; Exhibit 22 an alcohol lamp; Exhibit 23 a bottle of unidentified fluid; Exhibit 24 a bottle of after-shaving lotion; Exhibit 25 unidentified white crystals; Exhibit 27 a roll of absorbent cotton (R. Pp. 39-40-41).

The witness Gallagher was permitted in great detail to describe movements and operations of the defendants in attempting to transfer impressions by the use of money with the exhibits named.

With count No. 1 stricken, not a particle of all of this mass of testimony, covering more than a hundred pages of typewritten matter, was competent; but it was thoroughly prejudicial, and could not help but convey to the jury the thought that defendants were charged with counterfeiting, a subject not charged in the indictment. This testimony was all objected to, overruled and admitted, and was in the highest sense incompetent and prejudicial to the

defendants who were, after the dismissal of count No. 1, being tried only on count No. 2. If the defendants had been charged in a proper count with an offense of obtaining money by trick or by fraud, which, under some statutes, constitutes obtaining money under false pretences and in others the offense of grand larceny, this testimony would have been competent yet it was received and considered by the jury in determining whether the defendants were guilty of having in their possession and under their control "distinctive paper which had been adopted by the Secretary of the Treasury of the United States for the obligations and other securities of the United States, and did have in their possession a similar paper adapted to the making of such obligations and other securities, without the authority of the Secretary of the Treasury, or other proper official of the United States." (R. 3) In other words, this evidence, as suggested, could not help but lead the jury to believe that the defendants were being tried for counterfeiting by using some common white paper, capable of being purchased in any stationery store upon which some useless impressions were made.

If defendants were guilty of any offense whatever, it was a violation of a state statute for the obtaining of money by "cheat or fraud" designated by some states as obtaining money under false pretences, or larceny by fraud. That this was the wrong-doing of the defendants, if any, is conclusively shown by the testimony of the Government witnesses; first, Clarence Cones, a counterfeiter and ex-convict and under-cover man for the Government (R. 11) testified "Raynor said he and two other persons had developed this system of swindling to a fine degree and that they could not be touched by law * * * (R. 13).

> Ques. Now, state whether or not the defendant Raynor or the defendant Fowler, either one or both, indicated to you, or said to you whether they were going to actually reproduce by $10,000. * * * * * all of this $10,000.00 worth of money that Hallowell was going to bring in for Carl Smith.

Ans. No, they had no intention to reproduce the $10,000.00.

Ques. Did they tell you what they intended to do?

Ans. Yes.

Ques. What did the defendant Fowler and the defendant Raynor tell you they intended to do if they got the $10,000.00?

Ans. He explained to me that they would take the supposed victim and show him to such an extent that would thoroughly convince him that they could reproduce a genuine bill and, then, when he was thoroughly convinced, he would produce his $10,000.00 and through some sort of slight-of-hand performance, or otherwise, they would steal the $10,000.00 and make away wth it. (R. 13-4)

Again, Cones testified that when "Fowler came to my farm and gave me five one dollar bills, indicating which one Raynor would reproduce. Fowler said that when Raynor asked for my money to reproduce I was to take those out of my pocket and lay them on the table so that he could sort through them and take out the one he wanted. Four were old bills and Fowler said that Raynor would pick out the other, which was the newest one." (R. 14)

This affirmative testimony given by the Government stands uncontradicted. That it was a cheat and fraud which was sought to be perpetrated was further shown by the witness Gallagher who described the fake operation of the defendant Raynor in an attempt to make reproduced impressions of various bills, no one of which, according to this witness, could be used for money. Again, the impressions could be and were made on ordinary white paper, not even similar to or adapted for government obligations or securities. The impressions were made in reverse and in order to deceive anyone would have to be changed, "and in the present form, there is not anything about that which could deceive anyone into thinking it was money." (R. 45)

In other words, the entire demonstration made by the defendants before Gallagher, the supposed intended vic-

tim, was simply a fake to induce him to produce $10,000.00, in accordance with alleged plan of the government undercover man Cones, when he accompanied defendant Fowler to Evansville to see Carl Smith and pretended to get him to put up $10,000.00 on this confidence game, so that the money could be "switched" and stolen according to the plan detailed by Cones "that they would take the supposed victim and show him to such an extent that it would thoroughly convince him that they could reproduce a given bill and then when he was thoroughly convinced, he would produce his $10,000.00 and then through some slight-of-hand performance or otherwise, they would steal the $10,000.00 and make away with it". (R. 14)

That this was the plan could not be denied. The government's evidence conclusively demonstrates it. To perpetrate this fraud "distinctive" government paper "adopted" by the Secretary of the Treasury for use in producing government "obligations or securities" was not necessary. Any common white paper was sufficient. This was conclusively demonstrated by Exhibits 1 and 2, used for the purpose of making impressions, and which the witness Gallagher, as well as the Government expert Burton, testified was common ordinary paper, having no distinctive characteristics or similarity to the Government adopted paper. It cannot be supposed that the proposed victim had any knowledge of the character of this "distinctive" government paper, its quality, its adaptability, or that it had been adopted by the Secretary of the Treasury.

We, therefore, insist that the trial court erred in receiving the testimony referred to and in failing to withdraw it from the consideration of the jury when count No. 1 was dismissed. Defendants specifically objected to all of this testimony and assigned the court's rulings as errors in their grounds for appeal (Par. 13, R. 85) and in assignment of error VII (R. 90) independent of the other errors relied upon. Defendant insists that these rulings justify a reversal of the verdict of the jury and an affirmance of the

decision of the Circuit Court of Appeals, especially in view of the undisputed government testimony showing that the offense committed, if any, was an attempt to obtain money by cheat or fraud, and not charged in the indictment.

II.

The Government in seeking a reversal of the Circuit Court of Appeals, urges that the Court erred; (a) in construing the provision of the statute to relate only to genuine government paper, or paper which the government would use in printing its own obligations; (b) in holding that the statute did not apply to any paper not impregnated with a red or blue silk fibre, no matter how similar in appearance it might be to genuine government paper; and (c) in reversing the Trial District Court. (Brief P. 8.)

In effect, these specifications present but one question, the construction of the statute under which defendants were convicted. In reviewing the case, this Honorable Court limits its consideration to this one question and in so doing, we earnestly believe erred. That there is an honest diversity of opinion as to the construction, purpose, and meaning of this statute is shown by the fact that but two cases have ever reached the Appellate Courts, involving this statute.

In *Krakowsky* v. *U. S.*, 161 Fed. 88, decided March 10, 1908, the three Judges were unanimous in upholding the construction for which we contend. In the present case two of the three Judges of the Circuit Court of Appeals concurred in the ruling of the Krakowsky case and in this court three of the justices dissented. In other words, eight judges considering the statute involved, sustained defendants' position.

Under these circumstances, can it be wondered that the defendants earnestly urge a rehearing, particularly in view of the palpable error committed by the Trial Court, as shown in the discussion under the first sub-heading of this Brief.

Let us, however, consider the majority opinion. Reference is first made to the Act of October 12, 1837.[1]

This act furnishes no guide for the construction of that portion of Section 150, under which the defendants are being prosecuted. The 1837 Act does not make "the custody or possession of any paper adopted to the making of bank notes and similar to the paper upon which any such notes shall have been issued," an offense. It is only where it is in the custody or possessed, *with the intent to use* such paper for forgery or counterfeiting any of the notes issued. It is the criminal intent with which it is held in custody or possessed which constitutes the offense. The possession of similar paper, adapted to making the bank notes was not an offense. It was only when possessed for the express purpose of committing a felony, by either forgery or counterfeiting the lawful notes.

The language quoted in the opinion is only a part of section 11 of the Act and supplements provisions, relating to the custody or possession of engraved plates, or blank engraved notes, with intent to use either in forging or counterfeiting any of the government notes issued. In other words, the Act relates entirely to protecting the Government against forgeries and counterfeiting, the criminal intent in each instance constituting the gravaman of the offense.

The Court next directs attention to the fact that the Act of 1837 was subsequently re-enacted in 1847, in 1857, 1860 and 1861. These Acts are quoted in full in the Appendix to the Government Brief at pages 41 to 50. An examination of each of these Acts shows that the language is almost identical with the language used in the Act of 1837. The sole purpose being to prevent the forging and counterfeiting of Government notes and to punish any person having custody or possession of metallic engraven plates, or blanks engraved and printed, after the similitude of any notes issued, or the possession, or custody of any paper adapted to the making of such notes and similar to the paper on which the

[1] C. 2, Sec. 10-11, 5 Stat. 201-203.

notes shall have been issued "with intent to use, or cause, or suffer the same to be used in forging or counterfeiting, etc."

It will thus be observed that in each of these Acts, the sole purpose was to prevent forgery and counterfeiting and the intent with which the plates, blanks, or paper was possessed was the controlling factor.

From 1860 until 1864, several statutes were passed, but an examination of each of them discloses the fact that they were all enacted for the express purpose of punishing forging or counterfeiting government notes or securities, or wrongfully possessing paper, plates, or other material, with the intent to use, cause, or suffer the same to be used in the forging or counterfeiting of any of the notes issued by the Government.

Thus in Section 12 of the Act of December 17, 1860,[1] any person who shall falsely make or forge or counterfeit treasury notes, pass, alter, or publish government notes and obligations is guilty of a felony, while Section 13 again carries the language of the Act of 1837 and provides that the custody or possession of paper adapted to making of government notes, such as have been issued "with intent to use such paper, or cause, or suffer the same to be used in forging or counterfeiting shall be guilty, etc."

By this Act, there is no change from the previous existing statutes.

The Act of February 25, 1862,[2] contains the provisions of the pre-existing law and aims directly at meeting the question of forging, counterfeiting, or altering government notes and obligations. This Act slightly enlarges the previous statute, but does not change in any sense the meaning. It punishes one having custody, or possession of "any paper adapted to the making of such notes, bonds, coupons, or other securities and similar to the paper upon which any such notes, bonds, coupons, shall have been issued with in-

[1] C. 1, Sections 12-13, 12 Stat. 123.
[2] C. 33, Sections 6-7, 12 Stat. 345.

tent to use such paper, or cause, or suffer the same to be used in forging or counterfeiting any of such notes, bonds, or coupons, or other securities".

Here, the words "bonds" and "coupons" and "other securities" are added to the previous statute, but it requires again the criminal intent to constitute the offense for having custody or possession of the paper referred to.

The Act of July 11, 1862[1] does not re-enact any words.

The Act of February 12, 1862 makes the July Act apply to the established Act insofar as the latter Act is not inconsistent with the former. Here again, there is no change with respect to intent, or the unlawful Acts prohibited.

The Court's opinion states that the amendment to the Act of 1863[2] "struck vigorously at all who in any manner trafficked in such imitation paper."

The Section relating to the matter under discussion provides, that "the provisions and penalties of said 6th and 7th Sections shall extend and apply to all persons who shall imitate, counterfeit, or make, or sell paper such as that used, or provided to be used for the fractional notes, prepared in the Treasury Department."

The Sections referred to only makes it an offense where one intends to "imitate, counterfeit, make, or sell the paper." This Act does not change the pre-existing statute, insofar the intent necessary to constitute the offense, is concerned.

We respectfully insist that the Court erred in its interpretation of the Act of June 30, 1864.[3] The opinion states that "Congress once more re-enacted the 1837 Act and made it a more effective weapon against counterfeiters. The element of intent was stricken from the offense and the mere unauthorized possession of imitation paper was made a crime." (Opinion, P. 3)

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[1] C. 142, Sections 5-6, 12 Stat. 532.

[2] C. 73m, Section 8, 12 Stat. 709.

[3] C. 172, Secs. 10-11-12, 13 Stat. 218.

By Section 10 of that Act, it is provided "that if any person or persons shall falsely make, forge, counterfeit, or alter, or cause, or procure to be falsely made, forged, or counterfeited, or altered, any obligation or security of the United States," etc., would be guilty.

While Section 11 makes it an offense for a person to have control, or custody of plate or plates, prepared by the direction of the Secretary of the Treasury, or who shall knowingly suffer the same to be used for the printing of government obligations or securities, except under the direction of the Secretary of the Treasury, or other proper officer, or with any other intent, or who shall have in his possession metallic engraved plates in the similitude of any from which government obligations shall be printed with the intent to use, or suffer the same to be used, shall be guilty.

The Section then contains other provisions, relating to the use of these plates, or aid in printing, photographing, or doing various other acts, "or shall have, or retain in his custody, or possession after a distinctive paper shall have been adopted by the Secretary of the Treasury for obligation or other securities of the United States, any similar paper adapted for the making of such obligation, or other security, except under the authority of the Secretary of the Treasury or some other proper officer of the United States" etc., shall be guilty.

Reading the latter provision in connection with the preceding statements contained in this section shows clearly that this custody or possession of the "distinctive" paper relates back to the statements where these various matters are used or possessed "with intent to use such plate or plates, or caused, or suffered the same to be used in forging, or counterfeiting any such obligation or other security".

In other words, the Section contains but one sentence, separated by commas, and semi-colons, showing that the entire Section must be construed together and that its sole purpose was to prevent the use of the prohibited matters, or the custody, or possession of a "distinctive" paper, from

being used for forging, or counterfeiting, government obligations, and that it was the intent to use or possess the plates, paper, or other material for forging, or counterfeiting the government's obligations or securities.

Again, in analysing Section 11, it will be noted that the first provision relates to the possession for the purposes of printing obligations, or other securities of the Government and, next, for the engraving of plates in the likeness or similitude of plates designed for printing such obligations, and with the bringing into the United States from any foreign places any plates, except under the direction of the Secretary of the Treasury, or other proper officer "with any other intent or for any other purpose" than that they should be used for the printing of the government obligations.

The Section next specifically provides that any one who shall have the control, custody, or possession of metallic plates engraved with intent to use such plates in forging, or counterfeiting, such obligations or securities, or should not have such plates in his possession, except under the authority of the Treasurer.

Next, it is provided that, if a person shall intend to sell, or otherwise use any engraved similitude, or shall print the same, would be guilty of the offense.

In other words, if the possession of the plates, or the use thereof, for the sale of the same must be with the intent of forging or counterfeiting, can it be said that any different rule would apply in possessing the "distinctive" paper which has been adopted by the Government?

This entire Section is aimed at one thing and that is to prevent forging and counterfeiting of government obligations. If the offense is created, and intent is required in the one instance, why not in the other?

Congress in the passage of this Act was doing nothing more than carrying out the intent which had prevailed in the previous enactments and was not in any sense relaxing the rule with respect to counterfeiters, but was making still defi-

nite and certain what constitutes the offense of forging or counterfeiting.

We earnestly contend that this Provision of the Statute does not eliminate the question of intent. In this Section for the first time does the Statute refer to the custody, or possession of a "distinctive paper", after the same shall have been adopted by the Secretary of the Treasury.

The fact that that Act provides for "distinctive paper" which has been adopted by the Secretary of the Treasury clearly shows that it must be the "custody or possession" of this particular paper which constitutes the offense, if the possession is with the intention of using it in the making or producing of "obligations or securities" of the United States, which would constitute therefore forgery or counterfeiting.

It cannot with reason be contended that if one becomes possessed with this "distinctive paper" that he would thereby be guilty. His possession or custody would have to be wrongful and, under any circumstances, with the purpose or intention of using it in an unlawful manner, that is in forgery or counterfeiting the "obligations or securities" of the United States. If this reasoning is correct, then to make the offense a criminal act, the intention to wrongfully use it would have to be shown.

While the Court casually referred to and in part quoted from the various legislative enactments down to 1864, no attempt was made by the Court to quote the various Congressional reports from the Committees having charge of these enactments either in the House or the Senate. In the Opinion rendered nothing is presented to show that the construction adopted was ever even suggested by either branch of Congress. Mere reference to the Statute does not show the legislative intent or construction placed on the statute in question in this action.

If a rehearing is granted an opportunity will be afforded to check and present these reports to the Court and thereby obtain the full history of these enactments and enable the

Court to more correctly determine the legislative intent, and thus reach a proper construction of the Act in question.

The Act of 1864 just described was carried over into Section 5430 of the Revised Statute without any change insofar as the Act under consideration is concerned. These Provisions were finally by the Act of March 4, 1909, embraced in the Criminal Code.[1] The Statute now under consideration in almost the identical language has been in force and effect since 1864 and the discussion and analyses of the Act of 1864 applies with equal force to the present Section 150.

As was so clearly pointed out in the Opinion rendered by the Circuit Court of Appeals, there are seven (7) paragraphs in Section 150, all intended to protect the "obligations and securities" of the United States.

> In the first paragraph it is the use of the prohibited article; in the second it is the making of a plate in the likeness of a government plate; in the third it is the selling or bringing into the United States of any prohibited plate with the intent that it be used for a purpose other than the printing of government obligations; in the fourth, it is the possession of the prohibited plate with the intent to use in counterfeiting such obligations; in the fifth, it is the having possession of a spurious obligation with the intent to sell or use same; in the sixth, it is the making or selling of the prohibited article. In the seventh paragraph, the one under consideration, it is the possession of paper similar to that adopted by the government and adapted to the making of government obligations that has made the offense.[2]

The evidence offered both by the Government and Respondents showed that the paper possessed by the Defendants is in common use. It is on sale by every dealer and possessed by thousands of citizens. Paper of the kind used

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[1] C. 321, U. S. C., Title 18, Secs. 148-155, 35 Stat. 1088-1115-1117.

[2] 80 Fed. 2nd 472.

by the Government in printing currency and its obligations and securities is of a distinctive type in that it is impregnated with red and blue silk fibre, a feature not present in commercial paper. It is not for sale by any merchants and cannot lawfully be purchased or possessed, except by the authority of the Secretary of the Treasury or other proper officers. It is faithfully guarded by the Government from the moment of its manufacture until it is released for circulation as government obligations.

It is the possession of paper thus suitable for and adapted to the making of genuine obligations that Congress was outlawing. The Government admits that the paper possessed by the Defendants did not contain the silk fibers. For the Defendants to be guilty it would be necessary for the government to prove (a) that the paper possessed by Defendants was a distinctive paper adopted by the Secretary of the Treasury (b) that Defendants had in their possession a similar paper ~~to~~ that adopted by the government and adapted to the making of government "obligations or other securities" (c) that the possession was not under the direction of the Secretary of the Treasury or some other proper officer of the government.

The evidence conclusively shows that the paper possessed by the Defendants was not the distinctive type adopted by the Secretary of the Treasury and that it was not adapted to the making of valid government "obligations or other securities." We will hereafter briefly refer to the evidence upon which we base the foregoing statments.

But one small piece of paper, known as Exhibit 3, was relied upon by the government for a conviction. Exhibits 1 and 2 upon which impressions were sought to be made and the only paper, according to the government's witnesses Cones and Gallagher, which were used by Defendants, and were not similar to the "distinctive" government paper. These Exhibits were on plain, ordinary, white paper and did not possess any of the claimed characteristics of the

government's Exhibit 28, the "distinctive" paper adopted by the government.

Exhibit 3 was one small piece of white paper, cut the size of genuine United States currency. (R. 30)

Exhibits 1 and 2 were used for the making of impressions and as stated by the witness Gallagher, Exhibit 3 was placed between Exhibits 1 and 2. (R. 30)

The witness was then asked if Exhibit 3 was similar paper to that adapted for use in making government obligations and securities. He answered, "I would say yes." * * * I would say that it is similar. * * * It is the size of genuine currency. It is bond paper. The paper used by the government is of a bond type, the feel and crackle of it, which are distinguishing features, are similar and it has *on the surface* curls of red and blue, which resemble distinctive red and blue fibers which are impregnated into genuine government currency paper." (R. 31-32)

> Mr. Jeffrey: As I understand it, your Honor, the only Exhibit, now, on the question of similar paper is that Exhibit 3, isn't it? The other Exhibits, the papers that were seized, are none of them in evidence?
>
> The Court: How about the two on which the impression was made? Was there some evidence that they were similar paper? Those were Exhibits 1 and 2 weren't they?
>
> Mr. Pfister: Yes sir.
>
> The Court: Did you testify to the similarity of that paper?
>
> Mr. Pfister: I was not asked as to that.
>
> The Court: Mr. Gallagher, I hand you Government's Exhibits 1 and 2 and ask you whether or not the paper bearing those impressions is similar to that adopted by the Secretary of the Treasury of the United States for the making of obligations and securities of the United States, and whether or not that paper is adapted to that use.
>
> Ans. In my opinion it is not.
>
> The Court. Then, the one Exhibit is the only one.
>
> Mr. Pfister: That is right, your Honor. (R. 42)

Nevertheless while Exhibits 1 and 2 were used by Defendants in attempting to make impressions to deceive the witness Gallagher, it is not contended that the paper was similar to that adopted by the government.

On Cross-Examination, when the witness Gallagher was asked concerning Exhibits 1 and 2, he stated, that "neither one of them is of any paper that is adapted to government use. Government Exhibit 3 differs from Defendants' Exhibits 1 and 2 in that it is impregnated with the distinguishing feature of government paper, the first distinguishing feature, which is the red and blue curls. * * * By looking at them I can tell they are drawn on the surface of the paper. * * * I think they might be ordinary blue marks with a blue pencil, but I would not state that positively. I could tell by tearing the paper whether they are silk threads." (R. 47-8)

Ques. Well now, do you undertake to tell the jury that one of those pieces of paper, which you have here, may not be adapted to use as a Government obligation, but, by putting some of those red and blue marks on them, that adapts them to the use?

Ans. This piece was apparently adapted by that simple expedient.

Ques. What is the difference between Government's Exhibit 3 and Exhibits 1 and 2? Is it the same quality and type of paper as either Exhibit 1 or 2?

Ans. Well, it is part rag bond paper, which crinkles in the same way. As to chemical content, I couldn't answer that.

Ques. Well, then, you don't undertake to testify at this time what kind of paper that Government's Exhibit 3 is, do you?

Ans. No.

Ques. You haven't had it analyzed?

Ans. I have not.

Ques. And you don't know what the rag content is?

Ans. That is right. (R. 48)

Ques. Mr. Witness, I would like to have you take Exhibit 3 and make such a test, or any test, you wish, to determine whether those are silk fibers or crayon marks, or what they are.

Ans. I should like to have a pin.

The Court. Whatever examination you want to make, Mr. witness.

The witness. With a pin, you could lift out the silk fibers. That is about the best way to test it.

A pin was furnished and the witness then answered:

"I have dug into the paper on one of the lines, and find that it is not solid matter; it is something on the surface of the paper."

Ques. It hasn't any silk thread in there?

Ans. It isn't a thread. (R. 50-1) * * * It is a surface line of some sort. The Government does not use any paper for printing its currency and bonds unless the paper has silk threads in it."

Government's Witness Burton was asked in relation to Exhibit 3, and after comparing it with Exhibit 28, genuine government paper, he stated that the first thing noticeable in Exhibit 3 was red and blue lines on the surface. That while it had some characteristics, similar to currency paper and had a rattle which goes with a bond paper and that most any bond paper could be used for the printing of securities but bond papers do not have red and blue fiber.

On Cross Examination, the witness described the government distinctive paper and stated that the silk threads are not put in there to keep it together and keep it from going limp when it becomes wet, but to identify it.

Ques. Then, under your definition, you can go into any bookstore or place where they sell a good high quality bond typewriting paper and purchase paper which is, or can be, adapted to the making of Government obligations? Is that true?

Ans. Yes sir.

Ques. Would it in its present form be adapted, or what, if anything, would be necessary to adapt it to making Government obligations?

Ans. A good high grade bond paper, without a water mark, could be made distinctive with red and blue lines, in some way, and would then be suitable and adaptable for the manufacture of government securities which would pass in the ordinary run of commerce, I believe.

Ques. Does the Government ever print any money or bonds or obligations on that type of paper that you would get in a bookstore?

Ans. They print it on only the one kind because it is the distinctive paper that is legally required for the printing of government securities.

Ques. If any other company or book store undertook to sell any of this paper, which they have in stock and which is a good quality of bond typewriting paper, to the Government for the printing of Government obligations, the Government would not buy it, would it?

Ans. No, sir.

Ques. Why.

Ans. Because it did not have the control of their guards at their mill and it doesn't have the red and blue silk fiber.

Ques. And that paper would not be adapted to making government oligations? Is that right?

Ans. Not without the red and blue fiber or line.

Ques. But the Government would not use any paper like that for printing obligations would it?

Ans. No. Sir. * * *

Ques. What I am trying to ask is this: If the red and blue marks did not appear on Government's Exhibit 3, then it would not be a paper adapted to the making of Government obligations, would it?

Ans. You could print them on it, but you could tell that it was not the Government paper by the fact that there were no red and blue marks on it.

Ques. Well, then, it would not be adapted to making Government obligations, would it?

Ans. You could print them on it and get just as good an impress and just as good a printing quality. * * * but you could immediately tell that it was not without the red and blue lines on it. It is adaptable in that you can print just as good on it.

Ques. There is not any paper that can be adapted to the making of obligations of the United States unless it conforms to the standard set by the Secretary of the Treasury, is there?

Ans. Well, in my mind, the term "adaptable" means that it can be adaptable in some senses and not in others. It cannot, if it is not absolutely adaptable—

adaptable in every respect to the manufacture of currency.

Ques. The Secretary of the Treasury has set a standard for paper, which he requires to be used in making obligations of the United States? Is that true?

Ans. Yes, sir.

Ques. Now, the Government Exhibit 3 would not conform to that standard unless it had some red and blue marks on, would it?

Ans. No, sir. * * * If the marks on Exhibit 3 were erased then it would not be suitable or adaptable for making Government obligations, according to the standard set by the Secretary of the Treasury.

The witness was handed the original indictment and examined the printed sheet, with reference to the quality and then in answer to Counsel said "It was a good grade of rag bond and, having in mind the regulations and requirements of the Secretary of the Treasury, which have been adopted, the first sheet of the indictment is similar to the "distinctive" paper of the Government in many respects, and could be made adaptable to making Government obligations by the addition of red and blue marks of some sort by pencil, or otherwise.

Ques. And you make that statement in spite of the fact that the regulations of the Secretary of the Treasury require that this distinctive paper have silk red and blue threads in it?

Ans. Yes, sir. (R. 61-2)

The testimony quoted, in our judgment, conclusively shows that it was wholly insufficient to justify the verdict of guilty, and it was for this reason that Defendants in their motion for a new trial assigned the insufficiency of the evidence to support the verdict, and that this question was properly preserved, as stated in the grounds for appeal and in the Assignments of Error.

The Government's undisputed testimony showed that the Defendants were endeavoring to obtain money by a trick and a fraud. There was no attempt to possess paper

adapted for the making of Government "obligations or securities". The mere fact that one of the defendants stated that they had Government paper was only in keeping with their plan to trick and defraud the parties out of their money, if it was produced so that any ordinary paper would answer the purpose they had in mind.

There mere statement of witness Gallagher that in his opinion the Exhibit was similar to the paper used by the Government amounted to nothing when he demonstrated before the jury that the marks upon the Exhibit "might be ordinary blue marks made with a blue pencil".

And when asked by Counsel for the Defendants to demonstrate that it was only a mark and not a fiber in the paper, he conclusively demonstrated it with a pin point and said it was not a silk thread but "it is a surface line of some sort and the Government does not use any paper for printing its currency or bonds unless the paper has silk threads in it."

The expert Burton stated while the Exhibit had certain characteristics which goes with "bond paper and that most any bond paper could be used for the printing of securities, the bond paper did not have red and blue fiber". This witness, however, in his apparent desire to aid the Government, attempted to contend that a good high grade bond paper, without water marks, "could be made distinctive with red and blue lines in some way and might pass in the ordinary run of commerce". He was then forced to admit that such paper would not be used by the Government and that any paper not having the silk fiber would not be adapted to the making of Government obligations, so that if the paper in question is a bond paper that can be bought in any stationery store, we cannot conceive of evidence of that kind being sufficient to justify a verdict of guilty.

Under this evidence, there was no proof that the Defendants possessed distinctive paper, adopted by the Secretary of the Treasury, or that they had in their possession "a similar paper to that adopted by the Government and adapted to the making of Government obligations and se-

curities". If the Defendants possessed a large quantity of paper, similar in appearance to the distinctive paper of the Government and that they were endeavoring through some chemical process to "doctor" the paper so that it would have the permanent red or blue lines, such as exists in the distinctive Government paper and, there was further evidence that this similar paper was attempting to be used for the purpose of defrauding the Government, then there might be some basis for the contention that the Defendants were in the possession of similar distinctive paper, adapted for governmental use.

Reference was made by the Court to the dissenting Opinion of Judge Linsley in the Circuit Court of Appeals when he said, after an examination of the marks on Exhibit 3, that he could not tell whether "they are woven in the fabric or traced". With all due respect to the learned Judge, if he had with the same care, read the testimony of the Government witness Gallagher, he would have found that the marks were but pencilled tracings and this he demonstrated before the jury with a pin point. And that the Government's expert, Mr. Burton, said it was a surface mark.

We certainly trust that this Exhibit is before this Honorable Court and if not, that it can be called for as it was presented to the Circuit Court of Appeals.

We earnestly ask for an examination of this Exhibit for it would surely demonstrate the absurdity of the contention that this ordinary bond paper, with a few straggling pencilled marks on it is "similar" to the "distinctive paper" adopted by the Secretary of the Treasury and adapted for use in the making of Government obligations and securities.

III.

In view of the legal discussion of the questions presented in connection with the Petition for Rehearing and the numerous authorities cited by Counsel for Respondents in their Briefs before this Court, we have confined the arguments in this Supplemental Brief largely to a discussion

of the facts in the case in relation to the Statute under which they are being prosecuted, fully believing that a careful examination of the Record will disclose that the evidence was insufficient to warrant the verdict rendered.

As we have shown by the evidence of the Government's witnesses, the offense, if any was attempted to be committed, was not a violation of the Provisions of Section 150 of the Criminal Code, but, constituted a violation of a State Statute in relation to obtaining money by "trick or fraud."

The testimony is undisputed that what was attempted was purely a confidence game, in which false representations were made with respect to the ability of the Respondents to, by impressions, produce United States currency, in order that they might have their victim produce $10,000.00 and make a switch of packages, thereby becoming possessed of the legal $10,000.00, stealing it and, to use the language of the witness, "getting away with it". It simply was an attempt to stage an old game.

As shown by the use of Exhibits 1 and 2, it was clearly demonstrated that any common bond or typewriting paper would answer their purposes. This was the character of paper actually used in the demonstrations made.

The fact that Respondents may have attempted to perpetrate a fraud furnishes no justification for convicting them of an offense they did not commit. If, for the sake of argument, we assume that the construction of the Statute by the Court in its majority Opinion was correct, nevertheless, as we have demonstrated, the Trial Court clearly erred in respect to the matters discussed in the first subdivision of this Brief, and that as shown by the discussion in subdivision II, the evidence is insufficient to sustain the verdict, even if the interpretation of the Statute given by this Honorable Court is applied to these facts.

CONCLUSION.

In conclusion, we respectfully request that this Supplemental Brief may, by this Honorable Court be considered in connection with the Petition and Argument heretofore presented for a rehearing, and that the Court grant such rehearing and affirm the judgments of the Circuit Court of Appeals.

Respectfully submitted,

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P. 4

SUPREME COURT OF THE UNITED STATES.

Nos. 146, 147.—October Term, 1937.

146	The United States of America, Petitioner, *vs.* Ralph Raynor.	On Writs of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.
147	The United States of America, Petitioner, *vs.* Chett Fowler.	

[January 3, 1938.]

Mr. Justice Black delivered the opinion of the Court.

Respondents were convicted in a federal district court for violating a provision of Section 150 of the Criminal Code,[1] which reads:

"whoever shall have or retain in his control or possession after a distinctive paper has been adopted by the Secretary of the Treasury for the obligations and other securities of the United States, any similar paper adapted to the making of any such obligation or other security, except under the authority of the Secretary of the Treasury or some other proper officer of the United States, shall be fined not more than $5,000, or imprisoned not more than fifteen years or both."

The Circuit Court of Appeals reversed,[2] holding that the act did not prohibit the possession of any except the distinctive paper adopted by the Treasury, and that other paper was not prohibited even though it closely resembled the distinctive paper and was well suited for successful counterfeiting. The court accordingly believed that the evidence did not support a conviction.

The evidence disclosed that:

> In 1928, the Secretary of the Treasury adopted a distinctive paper for obligations and securities of the United States; this paper was a high grade rag bond having a sharp rattle, very little gloss, and short fine silk fibers distributed throughout; in 1936, respondents had possession of paper of practically the same color, weight, thickness and appearance as this distinctive government paper and cut to the dimensions of twenty dollar government obligations; respondents' paper rattled like genu-

[1] 18 U. S. C. A., Sec. 264; 35 Stat. 1116.

[2] 89 F. (2d) 469; certiorari granted, 301 U. S. —.

ine money; it did not have red and blue silk fibers throughout, but red and blue marks were so expertly designed upon its surface that one judge, dissenting below, after a careful examination of these marks with a magnifying glass, was still wholly uncertain whether they were actually woven in the fabric or were traced on the surface.

Did respondents' possession of this paper violate the act?

The paper was not only perfectly adapted for counterfeiting, but it is difficult to conceive of its use for any other purpose. The history and language of the act are both of importance in determining whether Congress intended to make it a crime to possess, without authority, so close an imitation of the genuine paper adopted by the Treasury.

1. The history of the law under which respondents were convicted dates from a special session of Congress in 1837. That Congress was called upon to pass legislation to meet emergency conditions following crop failures, general business distress, unemployment and discontent. Urged to action by these conditions, Congress authorized the issue of a then unprecedented amount of treasury notes. It had long been a criminal offense to make, utter, or pass counterfeit money. Realizing that the protection of the currency required more stringent laws against counterfeiters,[3] Congress made it a crime to possess any plate, blank note, or paper to be used for counterfeiting purposes.[4] This early forerunner of the present act provided in part:

"If any person . . . shall have in his custody or possession *any paper adapted to the making of bank notes, and similar to the paper upon which any such notes shall have been issued,* with intent to use such paper . . . in forging or counterfeiting any of the notes issued as aforesaid . . . such person . . . shall be sentenced" etc.

This original provision prohibited the possession of "similar" paper adapted to making "bank notes" but such "bank notes" ob-

[3] Counterfeiting increases in periods of commercial distress, unemployment, and poverty. Even prior to 1837, poverty contributed to offenses against the currency, see *Re:* Halmagh Ackerman, 5 N. Y. City Hall Rec. (1820) 140, and counterfeiters kept paper in their possession which was used for making counterfeit obligations, *Re:* Guy Johnson and William Johnson al. William Price, John Strickland, and Edward O'Melly, 5 N. Y. City Hall Rec. (1820) 138. In 1837 the prospect of increased counterfeiting—due to distressed economic conditions and the fact that non-federal agencies, both public and private, had already put a large amount of paper in circulation—indicated the need recognized by Congress in strengthening the law. See, Dewey "Financial History of the United States", Longmans, Green & Co. (N. Y.) 1915, p. 233. See Knox, "United States Notes", Scribner's (N. Y.) 1899, p. 40 *et seq.*

[4] Act of October 12, 1837, c. 2, Secs. 10, 11, 5 Stat. 201, 203.

viously were to be forged or counterfeit—not genuine. This first act thus prohibited—not the genuine—but counterfeit paper, intended to be made into counterfeit obligations, and its language and meaning were substantially reenacted in 1847, 1857, 1860, 1861 and 1862.[5]

Beginning December, 1860, Congress, to meet imperative needs, again authorized great increases in government obligations. By July, 1862, new issues of currency and unsettled conditions had so stimulated counterfeiting that Congress made special funds available to detect and punish those guilty of the crime.[6] Such action proved inadequate to curb counterfeiters, and in 1863, Congress reenacted, strengthened and strongly reinforced the 1837 prohibition against possession of paper for counterfeiting.[7] The 1863 law made it a crime to "imitate, counterfeit, make or sell any paper such as that used, or provided to be used by the fractional note." Although the law had prohibited the possession of paper imitating the genuine since 1837, this 1863 amendment struck vigorously at all who in any manner trafficked in such imitation paper.

By July, 1864, the government had outstanding approximately two billion dollars in war obligations, and the counterfeiter had become a still greater public enemy. Under these circumstances, with more currency to be issued, and the necessity for protection from counterfeiters greatly accentuated, Congress once more reenacted the 1837 act[8] and made it a more effective weapon against counterfeiters.[9] The element of intent was stricken from the offense and the mere unauthorized possession of imitation paper was made a crime. Congress also combined the phrase "paper adapted to the making of bank notes" with the phrase "similar to the paper upon which any such notes shall have been issued." It is the phrase re-

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[5] Act of January 28, 1847, c. 5, Secs. 9, 10, 9 Stat. 118, 120; Act of December 23, 1857, c. 1, Secs. 12, 13, 11 Stat. 257, 259; Act of December 17, 1860, c. 1, Secs. 12, 13, 12 Stat. 123; Act of July 17, 1861, c. 5, Sec. 10, 12 Stat. 259, 261; Act of February 25, 1862, c. 33, Secs. 6, 7, 12 Stat. 345, 347, 348.

[6] Act of July 11, 1862, c. 142, Sec. 5, 12 Stat. 533.

[7] Act of March 3, 1863, c. 73, Sec. 8, 12 Stat. 709, 713.

[8] Act of June 30, 1864, c. 172, Secs. 10, 11, 12, 13 Stat. 218, 221, 222.

[9] In the period preceding this enactment there was again a marked increase in counterfeiting. "There is reported to be in circulation throughout the United States, at the present time, over three thousand issues of counterfeit, spurious, raised and altered bank bills—an average of two issues to every bank in operation. Supposing each issue would average one thousand bills, which is a moderate calculation, there would be three million counterfeit bills in circulation; and the cry is, still they come!" Reedy, "The Universal Bank Note, Draft and Check Detector," New Orleans, 1858, p. 15. This growth resulted in alarming injury to the currency. "Annual Report, Ass'n. of

sulting from this combination—"*similar paper adapted to making such obligations*"—which was construed by the court below to limit the prohibited paper to the genuine Treasury-adopted paper. These phrases, carried in the law from 1837 to 1909, had obviously referred to any paper suitable for counterfeiting. If the Congress of 1864 did intend by combining these phrases to exempt from the act all who had possession of imitation paper, it thereby deliberately weakened the chance of the government to convict and punish counterfeiters. We do not impute such a purpose to Congress. By the change made in 1864 Congress undoubtedly intended to make the law a more effective weapon against counterfeiters. Indeed, two days after this amendment was passed Congress authorized a special appropriation to detect and punish counterfeiters.[10] It is beyond belief that Congress intended to relax the law against counterfeiters at a time when the nation was engaged in financing a war. Such a construction would be neither logical nor reasonable. The section now under consideration is plainly the culmination of a long series of legislative acts, each of which has declared it to be a crime to have possession of paper, counterfeiting the distinctive paper, and suitable to be made into counterfeit obligations. Each change since 1837 was intended to make the possession of counterfeit paper more dangerous for counterfeiters.

Finding nothing in the history of this law which supports the construction given it by the court below, we proceed to an examination and analysis of the particular language believed to justify that construction.

2. That particular language is the phrase "*similar paper adapted to making such obligations.*" The word "similar", and the phrase "adapted to making such obligations or securities", both describe the type of paper the possession of which is prohibited. The definitions given by the court below to this word and this phrase are irreconcilable.

Banks for the Suppression of Counterfeiting," Boston, 1859. After 1860, counterfeiting increased steadily. *Id.* 1860; *id.* 1862. "Specie payments were suspended on December 28, 1861. The war was carried on chiefly by the use of Treasury notes as a circulating medium." Knox, *supra*, p. 84. See Hepburn, "A History of Currency in the United States." MacMillan (N. Y.) 1915, pp. 179-204. However, by October 1862, it was reported that counterfeiting was widespread in America and uneasiness was being felt among Americans about the genuineness of the treasury and other notes issued by the United States. "The Bankers Magazine," London, Vol. XXII, p. 615 (1862). Improved means of preventing counterfeiting in order to maintain public faith in the currency became of great importance.

[10] Act of July 2, 1864, c. 210, Sec. 3, 13 Stat. 351.

That court defined "similar" to mean "somewhat alike"; "not exactly alike"; "like, but not exactly the same." "Similar paper", thus defined, cannot be identical with the distinctive paper adopted by the government, because while the two papers would be "somewhat alike", they would not be "exactly alike" or "exactly the same." Similarity is not identity, but resemblance between different things.[11] Under this definition, "similar paper", the possession of which is prohibited, is not identical with, but differs from the distinctive paper.

However, after giving this definition to similar paper (which is prohibited by the act), the court below concluded that the phrase "adapted to making such obligations" limits the prohibition of the act to the distinctive paper. This conclusion is not consistent with the determination that "similar"—also describing the paper prohibited—designates paper which is different from the distinctive paper. A construction that creates an inconsistency should be avoided when a reasonable interpretation can be adopted which will not do violence to the plain words of the act, and will carry out the intention of Congress.[12]

There is no inconsistency in the act unless it is assumed that the word "obligations" refers to genuine obligations only. Since words that have one meaning in a particular context frequently have a different significance in another,[13] it is necessary to consider the context of the words "such obligations", in order to determine their significance. The provision of law here construed is the last of seven separate offenses set out in one paragraph of a chapter of the Criminal Code entitled "Offenses against the Currency." The provisions of this chapter were enacted to prevent and to punish counterfeiting. Six closely connected companion offenses are set out in the same section with the offense charged against respondents and all either penalize the possession of, or trafficking in, counterfeit obligations or the materials and devices used to make such obligations.

Examining the context of the words under consideration we find that the word "obligations" appears throughout the Chapter relating to offenses against the currency, and does not always apply to "genuine" obligations, but may, and often does refer to "coun-

[11] Greenleaf *v.* Goodrich, 101 U. S. 278, 282, 283. See, Rhode Island Hospital *v.* Olney, 16 R. I. 184; 13 Atl. 118.

[12] New Lamp Chimney Co. *v.* Ansonia Brass & Copper Co., 91 U. S. 656.

[13] Porto Rico *v.* Lorenzo, 222 U. S. 481; Lamar *v.* United States, 240 U. S. 60; Atlantic Cleaners & Dyers *v.* United States, 286 U. S. 427.

terfeit'' or ''spurious'' obligations. In order to distinguish between counterfeit and genuine instruments, the provisions in some instances specifically designate notes as ''false, forged or counterfeited'' as in Section 149. On the other hand, Section 152 makes it a crime for any person, without authority, to make tools to be used in printing ''any kind or description of *obligation or other security of the United States now or hereafter authorized by the United States.*'' Although these quoted words are ''any kind of . . . obligation . . . authorized by the United States'', the reference is not to genuine obligations, but to counterfeit obligations, not only printed ''without authority'' but printed with counterfeit tools made by the counterfeiter. It is apparent from the context that in this instance the phrase ''obligation . . . authorized by the United States'' refers to a counterfeit obligation. Both before and since the 1837 act words such as ''bills'', ''notes'' and ''obligations'' have been used as meaning counterfeit instruments.[14]

The relative positions of the words we are examining are important. The first word describing the prohibited paper is ''similar.'' Unless the paper possessed is ''similar'' to the distinctive paper of the government, its possession is not prohibited. Genuine obligations can only be made from the genuine distinctive paper, with a genuine design; with genuine lithographing; and with genuine signatures. Conversely, counterfeit obligations would be the result of designs, lithographing, signatures or paper—not genuine,

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[14] As illustrative, the following extracts from cases involving offenses against the currency refer to false or counterfeit instruments: ''When a man has the possession of the number of *notes* alleged in the indictment, with an intention of uttering and passing them for the fraudulent purpose expressed, he has done all that, in words, is necessary to constitute the offence.'' Commonwealth *v.* Sylvanus Cone, II Mass. Reports, 131 at 134 (1806); ''Without mentioning any other differences, it is sufficient to observe, that to constitute the crime described in the former, the possession of at *least ten bills is necessary* . . .'' Murry Brown *v.* The Commonwealth, 8 Mass. Reports, 59 at 71 (1811); ''Bowdain Brastow, was indicted and tried for passing a *$10 bill of the Merchants' Bank.* . . .'' *Re:* Halmagh Ackerman, *supra*, p. 140 (1820); ''In the same place, they found a copper-plate press, a plate for engraving *$2.00 bills on the Merchants' Bank*, and under the roller of the press, *a bill* of that description recently struck off.'' *Re:* Guy Johnson & William Johnson al. William Price, John Strickland and Edward O'Melly, *supra*, p. 138 (1820); cf. State *v.* Randall, 2 Vt. (Aiken) 89, (1827); (cf. Baldwin *v.* VanDeusen where it is stated: ''In reference to bank-bills, bills of exchange, promissory notes and securities for money, the natural and general, if not the universal, antithesis or opposite of genuine, is 'counterfeit.' Hence we say of a bank bill it is a *genuine bill*—i. e., not a counterfeit bill. . . .'' 37 N. Y. Rep. at 493, (1868)); see, Wiggains *v.* United States, 214 Fed. 970 at 971; ''*The bonds* admittedly belonged to the plaintiff in error.'' Forlini *v.* United States, 12 F. (2d) 631 at 634; '' . . . appellant visited the basement while counterfeiting operations were in progress and participated in conversations as to the appearance of the bills that were being made and the

but merely "similar" to the genuine. When, therefore, Congress used the words "similar paper" it included within its prohibition an imitation or counterfeit of the genuine paper. The effect was the same as though it had prohibited possession of a government obligation bearing a signature "similar" to the signature of the Secretary of the Treasury. After the appearance of the word "similar," subsequent words descriptive of the prohibited paper require a construction that will give effect to the Congressional intent to prohibit the possession of paper which is an imitation or counterfeit of that adopted by the government.

In *United States* v. *Howell*, 11 Wall. 432, this Court construed a similar statute which so far as pertinent provided:

"that if any person shall falsely make, forge, counterfeit, or alter . . . any note . . . issued under the authority of this act, or heretofore issued under acts to authorize the issue of treasury notes or bonds; . . . or shall have or keep in possession, . . . any such false, forged, counterfeited or altered notes . . . (such person) shall be . . . guilty of felony . . ." etc.

The defendant indicted under that statute urged that the words "such . . . notes" referred back to those notes that had been "issued under the authority of this act"; that notes issued under authority of the act were genuine; that the act, therefore, did not prohibit passing or possessing a counterfeit note.

This Court gave credit for the plausibility of such an argument, but said it was:

> "at war with common sense, which assures us that the purpose of the act was to punish the making of counterfeits of the notes and bonds described in this act. . . . We are to give due weight to all of the words employed in describing the instrument, . . . So we speak of a bank note. Now if the paper spoken of is a forgery, it is not a bank note, which means the obligation of some bank to pay money. But here also the mind supplies the ellipsis which good usage allows, and understands that what is meant is a forged paper in the similitude of a bank note, or which on its face appears to be such a note." (pp. 436, 437.)

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necessity of putting more yellow in the coloring;" Nivvelink *v.* United States, 66 F. (2d) 178; "One *bill* was found in his clothes, and he volunteered to show the officers where the rest were. . . . The sole issue was as to whether after Hatlen showed him the *bills*, he co-operated with him in disposing of them . . ." United States *v.* Gates, 67 F. (2d) 885; "The *obligations* were described as United States notes and identified by denomination, series number, and plate numbers." Simon *v.* United States, 78 F. (2d) 454, at 455. The word "banknote" may mean—not a genuine—but a counterfeit obligation. Webster's New International Dictionary (Merriam, 1914) in defining the word "counterfeit" uses as an illustration, "The banknote was a counterfeit."

So, in this case, paper which was in the possession of an unauthorized person and which was merely similar to genuine government paper, could not possibly be adapted to making genuine government obligations. In this statute, the words "similar paper adapted to making government obligations" imply that the similar paper should be adapted to making obligations that purport to be genuine and valid, but are not.

This construction is not inconsistent with a grant of authority to certain officials to permit possession of the prohibited paper. In this same Chapter containing laws to protect the currency of the United States there are other similar grants of authority relating to counterfeiting devices and permission can also be granted to possess the actual counterfeiting instruments or obligations.

The fact that Congress revised and codified the criminal laws after the Court of Appeals in the case of *Krakowski* v. *United States,* 161 Fed. 88, held that the act only prohibited possession of the distinctive paper does not detract from the soundness of this conclusion. One decision construing an act does not approach the dignity of a well settled interpretation.[15] It is not necessary to determine the effect of including this act in the Revised Statutes and the Criminal Code.

We are not unmindful of the salutary rule which requires strict construction of penal statutes. No rule of construction, however, requires that a penal statute be strained and distorted in order to exclude conduct clearly intended to be within its scope—nor does any rule require that the act be given the "narrowest meaning." It is sufficient if the words are given their fair meaning in accord with the evident intent of Congress.[16] Certainly, if Congress had intended to prohibit only the possession of distinctive paper it would have simply used the words "distinctive paper" instead of the distinguishing words "similar paper adapted to making such obligations."

The evidence does support the conviction of respondents. The judgment of the Court of Appeals is reversed and the judgment of conviction is affirmed.

Reversed.

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[15] For prosecutions under the Act subsequent to the *Krakowski* case, *supra,* see the following cases: United States *v.* Rosen (W. D. Tex.), February 14, 1931; United States *v.* Regsich and Grubich (W. D. Pa.), December 16, 1920; United States *v.* Marchetti (N. D. Ohio), June 18, 1924; United States *v.* Maratea and Plocket (E. D. Pa.), January 21, 1932.

[16] United States *v.* Giles, 300 U. S. 41.

SUPREME COURT OF THE UNITED STATES.

Nos. 146, 147—October Term, 1937.

The United States of America, Petitioner,
146 *vs.*
Ralph Raynor.

The United States of America, Petitioner,
147 *vs.*
Chett Fowler.

On Writs of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[January 3, 1938.]

Mr. Justice Sutherland, dissenting.

Mr. Justice McReynolds, Mr. Justice Butler and I have reached a different conclusion.

The judicial function, as many times we have been told, does not include the power to amend a statute. And while penal statutes are not to be construed so strictly as to defeat the obvious intention of the lawmaker, nevertheless—"Before one may be punished, it must appear that his case is plainly within the statute; there are no constructive offenses." *United States* v. *Resnick*, 299 U. S. 207, 210.

We think the opinion just handed down undertakes to import a meaning into the pertinent statute at war with its words. That statute requires the existence of four distinct elements before the accused can be held guilty of violating it: (1) the adoption by the Secretary of a distinctive paper for the obligations and other securities of the United States; (2) possession or retention by the accused of "similar paper"; (3) the paper to be "adapted to the making of any such obligation or other security"; and (4) the possession or retention not to be under the authority of the Secretary of the Treasury or some other proper officer of the United States.

The word "similar", it is true, generally indicates resemblance and not exact identity, although in some cases it may mean "identical" or "exactly like." *Fletcher* v. *Interstate Chemical Co.*, 94 N. J. L. 332, 334. The distinction is illustrated by the decision of

the Supreme Judicial Court of Massachusetts in *Commonwealth* v. *Fontain,* 127 Mass. 452, 454, where it was held that the words "similar offense" meant an offense identical in kind. The court said, "The word 'similar' is often used to denote a partial resemblance only. But it is also often used to denote sameness in all essential particulars. We think the Legislature intended to use it in the latter sense in the statute we are considering." To determine the precise meaning of the word here, we must turn to the statute. The crucial elements there disclosed are those embraced by clause (2), requiring that the paper possessed or retained be "similar paper" to that adopted by the Secretary, and by clause (3) which requires that the paper be adapted to the making of "such" obligation or security. It is as necessary to give appropriate effect to the latter clause as it is to the former. It is not enough that the paper would be "similar" paper within the meaning of clause (2) standing alone; for it does not stand alone, but is associated with and qualified by clause (3). Nothing is better settled in the law of statutory construction than the rule that words by themselves may have a particular meaning, but that this meaning may be enlarged or restricted when considered in connection with other associated words. And this is more especially true where the associated words supplement and qualify the preceding ones as they do here.

In order to apply the rule, we must ascertain the meaning of clause (3), since that adds the requirement that the similar paper shall be adapted to the making of "such" obligation or security. That is to say, we first must determine the import of the word "such"; and that is disclosed by clause (1), providing for the adoption of distinctive paper for the obligations and securities of the United States. This means, and can only mean, genuine obligations and securities, since it cannot be supposed either that the Secretary, by clause (1), is authorized to adopt paper for any that are not genuine, or that his authority under clause (4) is not alone to permit possession of paper adapted to making genuine obligations but extends to paper which resembles the adopted paper only enough to make it adaptable for counterfeiting those obligations. It follows, necessarily, that it is genuine obligations and securities and not counterfeits of them that are embraced by the word "such" in clause (3).

The provisions of the statute were not meant to cover counterfeiting, or preparations antecedent to counterfeiting. Their whole

purpose was to penalize possession or retention by unauthorized persons of the distinctive kind of paper which the Secretary has adopted for the making of the obligations of the United States; language which, as we have said, necessarily imports genuine obligations, because if not genuine they would not be obligations of the United States at all.

The government, however, takes the view that the statute extends to the possession of paper suitable, not for making genuine obligations, but for *counterfeiting* them. And this view, as we understand it, is also taken by the court in its present opinion. The difficulty with that view, however, is that it requires the introduction of an amendment so that clause (3), instead of reading "adapted to the making of such obligations", etc., will read "adapted to the making of *counterfeits of* such obligations", etc. Such an assumption of legislative power is inadmissible.

That the paper here in question, even if in the hands of the Treasury, was not adapted to the making of genuine obligations, is beyond dispute. The distinctive feature of the paper adopted by the Secretary is the presence of short, fine red-and-blue silk fibers impregnated in and distributed throughout a high-grade rag bond paper. These silk fibers are entirely absent from the paper here in question; and while it might have been used for counterfeiting government obligations, it was not adapted to making the genuine articles. The present decision brings within the reach of the statute every stationer who has in his possession for sale any high-grade rag bond paper, if it is capable of being used for counterfeiting government obligations. For the statute, it will be observed, requires no criminal intent, and nothing beyond mere possession or retention.

The view of the statute which we have expressed was adopted thirty years ago by the Circuit Court of Appeals for the Second Circuit in *Krakowski* v. *United States,* 161 Fed. 88. In the meantime, Congress has left the statute in its original form. The government did not see fit to ask review of the *Krakowski* case, but has apparently acquiesced in it for all those years. This court should not be expected to disregard the established rules of statutory construction in order to remedy a situation which Congress could have cured, and may still cure, by a simple act of legislation. We think the well-reasoned opinion of the court below should be accepted and its judgment affirmed.